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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.

Rules and Regulations

Federal Register
Vol. 64, No. 101
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DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Parts 1980 and 3575

RIN 0575–AC17

Community Programs Guaranteed Loans

AGENCY: Rural Housing Service, USDA.

ACTION: Final rule.

SUMMARY: The Rural Housing Service (RHS) is amending the Community Programs (CP) Guaranteed Loans regulation, which is also utilized by the Rural Utilities Service (RUS), by removing the requirements for Community Facilities and implementing a new Community Programs Guaranteed Loans regulation. RUS will continue to use 7 CFR part 1980, subpart I for RUS guaranteed loans. This action is needed to streamline and update the Community Programs Guaranteed Loans program. The intended effect is to simplify and clarify the regulation; shift some responsibility for loan documentation and analysis from the Government to the lenders; make the program more responsive to the needs of lenders, local community public bodies, and nonprofit corporations; and provide for smoother processing of applications.

EFFECTIVE DATE: June 25, 1999.

FOR FURTHER INFORMATION CONTACT: Mel Padgett, Community Programs Senior Loan Specialist, Rural Housing Service, U.S. Department of Agriculture, STOP 3222, 1400 Independence Ave. SW., Washington, DC 20250–3222, telephone: (202) 720–1495.

SUPPLEMENTARY INFORMATION:

Classification

This final rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by OMB.

Programs Affected

The Catalog of Federal Domestic Assistance Programs impacted by this action are 10.766, Community Facilities loans.

Intergovernmental Review

These loans are subject to the provisions of Executive Order 12372 which require intergovernmental consultation with State and local officials. RHS conducts intergovernmental consultations for each loan in the manner delineated in subpart V, part 3015 of title 7.

Civil Justice Reform

The final rule has been reviewed under Executive Order 12988, Civil Justice Reform. In accordance with this rule: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) except as expressively provided in the regulation, no retroactive effect will be given to this rule; and (3) administrative proceedings of the National Appeals Division (7 CFR part 11) must be exhausted before bringing suit in court challenging action taken under this rule.

Environmental Impact Statement

The action has been reviewed in accordance with 7 CFR part 1940, subpart G, ''Environmental Program.'' The Agency has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment and, in accordance with the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, an Environmental Impact Statement is not required.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. chapters 17A and 25, established requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, RHS generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. When such a statement is needed for a rule, section 205 of the UMRA generally requires RHS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

National Performance Review

This regulatory action is being taken as part of the National Partnership for Reinventing Government to eliminate unnecessary regulations and improve those that remain in force.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). The undersigned has determined and certified by signature of this document that this rule will not have a significant economic impact on a substantial number of small entities since this rulemaking action does not involve a new or expanded program.

Implementation

It is the policy of this Department that rules relating to public property, loans, grants, benefits or contracts shall comply with 5 U.S.C. 553 notwithstanding the exemption of that section with respect to such rules.

Paperwork Reduction Act

The information collection and recordkeeping requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 and were assigned OMB control number 0575–0137, in accordance with the Paperwork Reduction Act of 1995. Under the Paperwork Reduction Act of 1995, no person is required to respond to a collection of information unless it displays a valid OMB control number. This final rule does not impose any new information or recordkeeping

requirements from those approved by OMB.

Discussion of the Final Rule

This action replaces the Community Facilities portion of the CP guaranteed loan program administered under 7 CFR part 1980, subpart I. Under the final rule, this guaranteed loan program will be more flexible and place more reliance on lenders. There are fewer specific requirements for lenders. The lender has added responsibility for analyzing credit quality; for making, securing, and servicing the loan; and for monitoring construction. Application processing procedures will be more efficient; less burdensome for borrowers, lenders, and Rural Development staff; and will provide for more rapid decisions.

The CP loan program was authorized by the Rural Development Act of 1972. The loans are made by private lenders to public bodies, nonprofit corporations, and certain Indian tribes for the purpose of improving rural living standards and for other purposes that create essential community facilities located in cities, towns, or unincorporated areas of up to 50,000 population required by the Federal Agriculture Improvement and Reform Act of 1996. The previous statutory population limit for loans for essential community facilities was 20,000. For fiscal year 1999, the population unit will be 20,000 pursuant to § 735 of the Agriculture, Rural Development, Food and Drug Administration and Related Agencies Appropriation Act, 1999. Since 1990, more than 355 community programs projects, totaling slightly more than $325 million, have received loans which were guaranteed through CP.

These loans can be made for a variety of purposes including health care; public buildings and improvements; fire and rescue; easements; purchase of equipment, machinery, and supplies; repair and modernization; pollution control; and transportation studies. The rate and terms of the loan are negotiated between the borrower and the lender. This regulation is a high-priority effort to streamline the administration and operation of the program, respond to the requests of users of the program, and assist the field staff administering the program. The revised regulation is simpler, clearer, and more logically organized. The volume of regulatory material which a lender must review to request, make, or service a CP guaranteed loan under the new regulation is significantly less than the current regulation. Clarifications of various items are also included, such as what is meant by the term ''essential community facility.''

Except for the increase in the population limit in the definition of ''Rural and Rural area,'' the revisions are not required by statute. However, the President and the Secretary of Agriculture are committed to streamlining all Federal regulations. This CP regulation streamlines our application procedures, reduces loan application processing time by placing greater emphasis on State resources, allows more management flexibility and decision-making capacity at the State Office level, and expands eligible loan purposes to include recreation.

The Agency has implemented revisions to make the program more usable by lenders and borrowers. Also, the Agency recognizes that changes are necessary to make the program more effective in creating jobs and stimulating economic activity (particularly in chronically low-income rural areas). Under the new CP regulation, the material that must be submitted to, and reviewed by, the Agency before approval of the guarantee has been streamlined. Some responsibilities for credit analysis and application processing tasks will be shifted from the Agency to the lender, where feasible. Following is a discussion of some of the most significant policy revisions included in the final regulation.

To streamline the regulation, the Agency has combined applicable portions of the Direct Community Loan Programs (7 CFR part 1942, subpart A), Fire and Rescue (7 CFR part 1942, subpart C), General Guaranteed Regulation (7 CFR part 1980, subpart A), previously drafted Guaranteed Community Programs Regulation, and program requirements contained in forms which were not in regulations into the Guaranteed Community Programs Regulation (7 CFR part 3575, subpart A). The Agency also divided the regulation into general, processing, and servicing sections. These actions should significantly reduce the amount of regulatory material that a lender and a borrower must review to determine eligibility and complete the application. This will also simplify making and servicing a CP loan.

Additionally, the necessary information contained in the preapplication package can be submitted simultaneously with the application. Except the year that loan funds are received, the types of audited financial statements will be the responsibility of the lender. Also, we have included recreation as well as clarified that telecommunications are eligible loan purposes.

Under the new regulation, the lender is responsible for legal sufficiency. The lender will not only be able to negotiate interest rates, but will also be able to negotiate incremental increases and caps for each loan. This will give the lender more flexibility to fit the CP guaranteed loan program to its lending policies and procedures. The lender does not have to be a local lender provided it can demonstrate the ability to adequately service the loan. This will permit an expansion of eligible lenders to include such organizations as State bond banks, the Rural Utilities Cooperative Finance Corporation, Sallie Mae, and other lenders that are subject to credit examination and supervision by a State or Federal entity that supervises and regulates credit institutions. All of these organizations have expressed an interest in the CP guaranteed lending program in the past.

Discussion of Comments

The proposed rule was published in the **Federal Register** on October 7, 1997 (62 FR 52277), for public comment. Five comments were received. All of the comments received expressed support for the changes in this streamlined regulation. The comments ranged from making the regulation easier to read and follow to agreeing that the regulatory burden was lessened on the lenders as well as on our field employees. Also, the ability to change interest rates on a quarterly basis was supported as more in line with industry standards. Other changes which were supported are: permitting the lender to monitor construction rather than the Agency; permitting the preapplication information and the application to be completed as one process; and making the lender responsible for legal sufficiency.

One respondent requested consistent wording concerning the 5 percent which the lender must retain in its portfolio. The wording has been changed to clarify that the amount which the lender must hold will be 5 percent of the total loan amount and that this amount must be from the unguaranteed portion of the loan.

One respondent wanted to know what is contained in chapter 37 of title 31 of the United States Code. This chapter is commonly referred to as the Debt Collection Act.

Definitions

One respondent suggested that all Rural Development program areas have similar definitions for ''rural'' and ''rural area.'' The Agency agrees that similar definitions would make the programs easier for our field employees to implement. However, the Federal Agriculture Improvement and Reform

Act of 1996 redefined the definition for ''rural'' and ''rural area'' as it applies to Community Facilities programs. This definition has been incorporated into this regulation.

Except for fiscal year 1999, Community Facilities projects can be located in incorporated cities or towns or unincorporated areas with a population of less than 50,000; however, these projects cannot be located in urbanized areas regardless of the population. Urbanized areas are areas immediately adjacent to a city, town, or unincorporated area exceeding 50,000 inhabitants. The boundaries of urbanized areas are not limited to preexisting county or State lines. They often follow the boundaries of small census-defined geographic units such as census tracts and enumeration districts. Many urbanized areas cross county and sometimes State lines.

Eligibility

One respondent wanted to include sole-member corporations as eligible for the Community Facilities program. While this would increase the potential number of borrowers, it goes against the concept of broad-based community support.

One respondent suggested that business incubators be made an eligible purpose. Business incubators are already eligible provided they are designed as a training facility and they meet the basic eligibility criteria of being either a nonprofit corporation or a public body having broad-based community support.

One respondent indicated that combining the floodplain management plan requirements with flood insurance would eliminate service to most of his State. The Agency did not intend to change the existing floodplain requirements. However, in our efforts to streamline the regulations, we combined two requirements and used a conjunction which tied the two requirements together. The Agency has separated and reworded these requirements in this final regulation. The requirements are the same as our existing regulation. To make a loan in a Federal Emergency Management Agency designated 100-year floodplain, a floodplain management plan must be in place.

Also, National Flood Insurance must be available, and the lender must require such insurance.

As a result of internal discussions, the Environmental Requirements section has been expanded slightly in order to highlight the existing burden on the applicant to take no actions that would either limit the range of alternatives to be considered or which might adversely effect the environment prior to completion of the Agency's environmental review.

Equal Opportunity and Fair Housing Act requirements

One respondent suggested that we list all the specific individual requirements under these laws. These requirements are spelled out in a separate section. If a lender needs more specific information, the Agency can administratively handle these situations on a case-by-case basis.

One respondent requested clarification concerning the Agency's review of the equal opportunity and nondiscrimination requirements when evaluating an application. The Agency will further clarify our employees' responsibilities for reviewing loan applications in Agency instructions.

Rates and Terms

One respondent supported permitting both variable and fixed interest rates in the same loan but pointed out that the restriction which requires the guaranteed portion of the loan to always have a lower interest rate than the unguaranteed portion of the loan would prevent lenders from making the guaranteed portion fixed and the unguaranteed portion variable when the interest rate market is declining. We agree, and we have removed this restriction in these cases.

Design and Construction

One respondent said that this regulation seems to say that if the Agency guarantees a loan on an existing building, we would not require any changes to make the building meet the Americans with Disabilities Act (ADA). The ADA does not require that existing buildings be made accessible unless they are remodeled. Then only the portion which is remodeled must be made accessible. For example, if four interior offices were remodeled, only those four offices would have to be made accessible. But the restrooms or the entry way would not have to be accessible. If you remodeled the building front, then the front entry would have to be made accessible. In conclusion, any new work must be accessible and designed in accordance with the ADA. Any area of the existing structure that is not remodeled does not have to meet the ADA. Since this is not a Community Programs requirement, we will clarify this concept for our employees in our instructions.

One respondent suggested a standard certification form for the lender to complete certifying that construction has been completed in accordance with the proper building codes. To maintain flexibility and keep the regulations and public paperwork at a minimum, we have incorporated this as a lender certification.

One respondent suggested amending our concurrence to preliminary architectural or engineering reports or plans because many Community Facilities projects do not require complex reports but rather simple drawings and estimates of project costs. We agree. This was our original intent in the proposed general portion of the design and construction requirements section. We have added the words ''or plans'' to this section.

One respondent questioned the lack of a reference to procurement utilizing free and open competition. The borrower and the lender both benefit from free and open competition. In the spirit of reducing the regulatory burden to the public, the lender will now be responsible for determining the best method to ensure that the project is completed within budget. If the lender determines that design and build is a better method than sealed bids, the lender will have the flexibility to approve such construction.

Feasibility Requirements

One respondent strongly supported the loan approval official being able to determine if an independent feasibility analysis is necessary. It also stated that the economic section of the regulation confuses the lender credit analysis with the feasibility report. The Agency intends that the loan approval official will determine whether or not an independent feasibility analysis is necessary. Consequently, the lender's financial credit analysis may serve as a feasibility analysis when the loan approval official concludes sufficient economic information is provided in their analysis. We have added a sentence to clarify this issue.

Processing

One respondent indicated that we should have included a timeframe to provide the lender an answer. While we agree, this is an administrative matter within the Agency and will be incorporated into our field employee instructions.

One respondent suggested moving the subsection concerning changing the scope of the project from the section describing the conditions precedent to issuing a loan note guarantee to the section discussing the review of requirements in the conditional commitment. The Agency agrees and has moved this subsection.

One respondent suggested that the number of customers discussed in the loan application evaluation section should apply only to Water and Waste Division projects. The Agency disagrees. The number of customers is important for other utility-type projects such as gas distribution systems. Also, the number of customers may play an important role in other community facilities-type projects such as hospitals, nursing homes, and child care.

One respondent questioned if the certifications listed under the conditions precedent to issuance of the loan note guarantee section met all applicable requirements set out in the regulations. It was suggested clarification was needed. The Agency listed the items which the lender must certify to before the loan note guarantee could be issued. By certifying to these conditions, the lender is stating that it has met the requirements set out in the regulation.

One respondent requested clarification concerning the title report under the lender's certifications in the conditions precedent to issuance of a loan note guarantee. The respondent wanted to know whether or not the title report was referring to a final title opinion or a preliminary title opinion. The Agency intends this to be the lender's legal counsel's opinion which states that the loan has been closed and proper title has been obtained in accordance with the security instrument and other agreements between the lender and the Agency.

One respondent requested further clarification of the guaranteed loan closing report. This report is a Rural Development form. All references to specific form numbers have been eliminated from the actual text of the **Federal Register.** The actual form numbers will appear in the Agency instructions to our field employees. Only the form names appear in the **Federal Register**.

One respondent questioned the need to require a parity lien position. We agree, the lender should determine that adequate security is obtained for the loan and the Agency can either concur or choose not to guarantee the loan accordingly. This requirement has been deleted.

One respondent requested that the Agency eliminate the test for credit. The respondent further points out that the Rural Development Business and Industry (B&I) program does not require such a test for credit to be eligible for a guaranteed loan. The Agency is bound by statute and must require this test for credit. The B&I program is exempt from this statutory provision.

One respondent suggested that finder and packaging fees be considered an eligible loan purpose. This comment also suggested paying real estate broker fees. These fees are already paid as part of the sale and purchase. To be consistent with other Community Facilities loan programs, the Agency does not consider finder fees necessary. All Community Programs loans have professional and technical assistance such as architects, engineers, and accountants who provide similar services. Consequently, the Agency feels that paying additional fees is unnecessary.

One respondent requested clarification concerning whether or not the preapplication forms are still necessary when the Agency receives an application for a loan guarantee from a lender without going through the preapplication process. The Agency will accept applications without a preapplication package.

Servicing

Two respondents strongly suggested that the audit requirements should be the lender's responsibility. We agree, based upon discussions with our sister agencies and the Office of Management and Budget (OMB), we have determined that we do not have continuing compliance requirements as described in the OMB circular A–133. Consequently, in the year that funds are received, the Agency will require an audit in accordance with the OMB circular A–133. In subsequent years, the lender (with Agency concurrence) will determine the type of financial reporting and financial audits that will be required for the duration of the loan.

One respondent noted that the lender and borrower visits were omitted and suggested that they should be required periodically. While we agree, this is an administrative matter and will be addressed in the Agency's field instruction.

One respondent wanted to clarify that the sale of one lender to another in a merger situation did not constitute a transfer of lender. We agree.

One respondent suggested that we increase the amount of protective advances from $500 to $5,000 dollars. This amount would be consistent with other mission area regulations and would be consistent with inflation. We agree, the amount of protective advances which the lender can make without Agency concurrence has been increased from $500 to $5,000.

List of Subjects

7 CFR Part 1980

Loan programs—Agriculture, Loan programs—Business and industry, Loan programs—Housing and community development, Rural development assisance.

7 CFR Part 3575

Community facilities, Guaranteed loans, Loan programs.

Accordingly, chapters XVIII and XXXV, title 7, Code of Federal Regulations, are amended as follows:

PART 1980—GENERAL

1. The authority citation for part 1980 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

Subpart I—Community Programs Guaranteed Loans

§ 1980.801 [Amended]

2. Section 1980.801(b) is amended by removing the words ''and other essential community'' in the first sentence.

§ 1980.802 [Amended]

3. Section 1980.802 is amended by removing the definition for ''Community facilities.''

§ 1980.805 [Amended]

4. Section 1980.805 is amended by removing the third through the seventh sentences of the section.

§ 1980.813 [Amended]

5. Section 1980.813 is amended in the introductory text of paragraph (a) by revising the words '', and other essential community facilities providing essential'' to read ''providing'' in the first sentence and by removing paragraphs (a)(2), (b)(1), and (b)(2); paragraphs (a)(3), (b)(3), and (b)(4), are redesignated as paragraphs (a)(2), (b)(1), and (b)(2), respectively; and by removing the words ''and X-ray machines'' in newly redesignated paragraph (a)(2)(i).

§ 1980.814 [Amended]

6. Section 1980.814 is amended by removing paragraph (d) and redesignating paragraphs (e) through (h) as paragraphs (d) through (g), respectively.

7. Section 1980.844 is revised to read as follows:

§ 1980.844 Appraisal reports.

The borrower is responsible for the acquisition of all property rights necessary for the project and will determine that prices paid are reasonable and fair.

8. Chapter XXXV, title 7, Code of Federal Regulations is amended by adding a new part 3575 to read as follows:

PART 3575—GENERAL

Subpart A—Community Programs Guaranteed Loans

Subpart B—[Reserved]

Authority: 5 U.S.C. 301, 7 U.S.C. 1989.

Subpart A—Community Programs Guaranteed Loans

§ 3575.1 General.

(a) This subpart contains the regulations for Community Programs loans guaranteed by the Agency and applies to lenders, holders, borrowers, and other parties involved in making, guaranteeing, holding, servicing, or liquidating such loans.

(b) The purpose of the Community Programs guaranteed loan program is to improve, develop, or finance essential community facilities in rural areas. This purpose is achieved through bolstering the existing private credit structure through the guarantee of quality loans which will provide lasting community benefits.

§ 3575.2 Definitions.

The following general definitions are applicable to the terms used in this subpart:

Agency. The Rural Housing Service which is within the Rural Development mission area of the United States Department of Agriculture or its successor agencies with authority delegated by the Secretary of Agriculture to administer the Community Facilities programs.

Application. An Agency prescribed form to request an Agency guarantee (available in any Agency office).

Arm's length transaction. The sale, release, or disposition of assets in which the title to the property passes to a ready, willing, and able third party who is not affiliated with, or related to, and has no security, monetary, or stockholder interest in the borrower or transferor at the time of the transaction.

Assignment Guarantee Agreement. The signed agreement among the Agency, the lender, and the holder setting forth the terms and conditions of an assignment of the guaranteed portion of a loan or any part thereof (available in any Agency office).

Borrower. The entity that borrows money from the lender.

Collateral. Property pledged to secure the guaranteed loan.

Community facility (essential). The term ''facility'' as used in this subpart refers to both the physical structure financed and the resulting service provided to rural residents. An essential community facility must:

(1) Be a function customarily provided by a local unit of government;

(2) Be a public improvement needed for the orderly development of a rural community;

(3) Not include private affairs or commercial or business undertakings (except for limited authority for industrial parks);

(4) Be within the area of jurisdiction or operation for eligible public bodies or a similar local rural service area of a not-for-profit corporation; and

(5) Be located in a rural area.

Conditional Commitment for Guarantee. The Agency's written statement to the lender that the material submitted is approved subject to the completion of all conditions and requirements contained in the commitment (available in any Agency office).

Guaranteed loan. A loan made and serviced by a lender for which the Agency and lender have entered into a Lender's Agreement and for which the Agency has issued a Loan Note Guarantee.

Holder. The person or entity (other than the lender) who holds all or a part of the guaranteed portion of the loan with no servicing responsibilities. When the lender assigns part or all of the guaranteed portion of the loan to an assignee, the assignee becomes a holder when the Assignment Guarantee Agreement is signed by all parties.

Immediate family. Individuals who are closely related by blood or by marriage, or within the same household, such as a spouse, parent, child, brother, sister, aunt, uncle, grandparent, grandchild, niece, or nephew.

In-house expenses. In-house expenses include, but are not limited to, employees' salaries, staff lawyers, travel, and overhead.

Insurance. Fire, windstorm, lightning, hail, explosion, riot, civil commotion, aircraft, vehicles, smoke, builder's risk, liability, property damage, flood or mudslide, worker's compensation, fidelity bond, malpractice, or any similar insurance that is available and needed to protect the security or that is required by law.

Joint financing. Two or more lenders (or any combination of lenders and other financial sources) making separate relatively contemporaneous loans to supply the funds required by one borrower. For example, such joint financing may consist of the Agency's financial assistance with the Economic Development Administration, Department of Housing and Urban Development (HUD), or other Federal and State agencies, and private and quasi-public financial institutions.

Lender. The person or organization making and responsible for servicing the loan. The lender is also referred to in this subpart as the applicant who is requesting a guarantee during the preapplication and application stage of processing.

Lender's Agreement. The signed agreement between the Agency and the lender containing the lender's responsibilities when the Loan Note Guarantee is issued (available in any Agency office).

Loan classification system. The process by which loans are examined and categorized by degree of potential loss in the event of default.

Loan Note Guarantee. The signed commitment issued by the Agency containing the terms and conditions of the guarantee of an identified loan (available in any Agency office).

Market value. The amount for which property would sell for its highest and best use at a voluntary sale in an arm's length transaction.

Note. An evidence of debt. In those instances where the Agency guarantees a bond issue, ''note'' shall also be construed to include a bond or other evidence of indebtedness, as appropriate.

Participation. Sale of an interest in a loan in which the lender retains the note, collateral securing the note, and all responsibility for loan servicing and liquidation.

Principals of borrowers. The owners, officers, directors, entities, and supervisors directly involved in the operation and management of the borrower.

Problem loan. A loan which is not complying with its terms and conditions.

Protective advances. Advances made by the lender for the purpose of preserving and protecting the collateral where the debtor has failed to, and will not or cannot, meet obligations to protect or preserve collateral.

Public body. A municipality, county, or other political subdivision of a State, special purpose district, an Indian tribe on a Federal or State reservation, or another federally recognized Indian tribe.

Report of loss. A form used by lenders when reporting a loss under an Agency guarantee (available in any Agency office).

Rural and rural area. (1) For fiscal year 1999, the terms ''rural'' and ''rural area'' mean a city, town, or unincorporated area with 20,000 inhabitants or less according to the latest decennnial census.

(2) For later fiscal years, the terms ''rural'' and ''rural area'' mean a city, town, or unincorporated area that has a population of 50,000 inhabitants or less according to the latest decennial census of the United States, other than an urbanized area immediately adjacent to a city, town, or unincorporated area that has a population in excess of 50,000 inhabitants.

Service area. The area reasonably expected to be served by the facility being financed by the guaranteed loan.

State. Any of the 50 States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, Commonwealth of the Northern Mariana Islands, Republic of the Marshall Islands, Republic of Palau, and the Federated States of Micronesia.

State Bond Banks and State Bond Pools. An entity authorized by the State to issue State debt instruments and utilize the funds received to finance essential community facilities.

State Director. The Rural Development State Director or the staff member who has been delegated authority to perform action on behalf of the State Director.

Substantive change. Any change in the purpose of the loan or any change in the financial condition of the borrower or the collateral which would jeopardize the performance of the loan.

Transfer and assumption. The conveyance by a debtor to an assuming party of the assets, collateral, and liabilities of the loan in return for the assuming party's binding promise to pay the outstanding debt.

§ 3575.3 Full faith and credit.

The Loan Note Guarantee constitutes an obligation supported by the full faith and credit of the United States and is not contestable except for fraud or misrepresentation (including negligent misrepresentation) of which the lender or holder has actual knowledge, participates in, or condones. A note which provides for the payment of interest on interest shall not be guaranteed and any Loan Note Guarantee or Assignment Guarantee Agreement attached to, or relating to, a note which provides for payment of interest on interest is void. The Loan Note Guarantee will not be enforceable by the lender to the extent any loss is occasioned by violation of usury laws, negligent servicing, or failure to obtain the required security regardless of the time at which the Agency acquires knowledge of the foregoing. Any losses occasioned will not be enforceable by the lender to the extent that loan funds are used for purposes other than those specifically approved by the Agency in its Conditional Commitment for Guarantee. Negligent servicing is defined as the failure to perform those services which a reasonably prudent lender would perform in servicing its own portfolio of loans that are not guaranteed. The term includes not only the concept of a failure to act, but also not acting in a timely manner, acting in a manner contrary to the manner in which a reasonably prudent lender would act up to the time of loan maturity, or until a final loss is paid. The Loan Note Guarantee or Assignment Guarantee Agreement in the hands of a holder shall not cover interest accruing 90 days after the holder has demanded repurchase by the lender, nor shall the Loan Note Guarantee or Assignment Guarantee Agreement in the hands of a holder cover interest accruing 90 days after the lender or Agency has requested the holder to surrender the evidence of debt for repurchase.

§ 3575.4 Conditions of guarantee.

A loan guarantee under this part will be evidenced by a Loan Note Guarantee issued by the Agency. Each lender will also execute a Lender's Agreement.

(a) The entire loan will be secured by the same security with equal lien priority for the guaranteed and non-guaranteed portions of the loan. The non-guaranteed portion of the loan will not be paid first nor given any preference or priority over the guaranteed portion.

(b) The lender will be responsible for servicing the entire loan and will remain mortgagee or secured party of record notwithstanding the fact that another party may hold a portion of the loan.

(c) When a guaranteed portion of a loan is sold to a holder, the holder shall have all rights of the lender under the Loan Note Guarantee to the extent of the portion purchased. The lender will remain bound by all the obligations under the Loan Note Guarantee, Lender's Agreement, and Agency program regulations. If the Agency makes a payment to a holder, then the lender must reimburse the Agency.

(d) A lender will receive all payments of principal and interest on the account of the entire loan and will promptly remit to each holder a pro rata share, less any lender servicing fee.

(e) The lender may retain all of the unguaranteed portion of the loan or may sell part of the unguaranteed portion of the loan through participation. However, the lender is required to retain 5 percent of the loan amount from the unguaranteed portion in their portfolio.

§§ 3575.5—3575.7 [Reserved]

§ 3575.8 Access to lender's records.

Upon request by the Agency, the lender will permit representatives of the Agency (or other agencies of the U.S. Department of Agriculture authorized by that Department or the U.S. Government) to inspect and make copies of any of the records of the lender pertaining to the guaranteed loans. Such inspection and copying may be made during regular office hours of the lender or at any other time the lender and the Agency agree upon.

§ 3575.9 Environmental requirements.

Requirements for an environmental review or mitigation actions are contained in part 1940, subpart G, of this title. The lender must assist the Agency to ensure that the lender's applicant complies with any mitigation measures required by the Agency's environmental review for the purpose of avoiding or reducing adverse environmental impacts of construction or operation of the facility financed with the guaranteed loan. This assistance includes ensuring that the lender's applicant is to take no actions (for example, initiation of construction) or incur any obligations with respect to their proposed undertaking that would either limit the range of alternatives to be considered during the Agency's environmental review process or which would have an adverse effect on the environment. If construction is started prior to completion of the environmental review and the Agency is deprived of its opportunity to fulfill its obligation to comply with applicable environmental requirements, the application for financial assistance may be denied. Satisfactory completion of the environmental review process must occur prior to Agency approval of the applicant's request or any commitment of Agency resources.

§§ 3575.10—3575.11 [Reserved]

§ 3575.12 Inspections.

The lender will notify the Agency of any scheduled field inspections during construction and after issuance of the Loan Note Guarantee. The Agency may attend such field inspections. Any inspections or review conducted by the Agency, including those with the lender, are for the benefit of the Agency only and not for the benefit of other parties of interest. Agency inspections do not relieve any parties of interest of their responsibilities to conduct necessary inspections.

§ 3575.13 Appeals.

Only the borrower, lender, or holder can appeal an Agency decision. In cases where the Agency has denied or reduced the amount of final loss payment to the lender, the adverse decision may be appealed only by the lender. A decision by a lender adverse to the interest of the borrower is not a decision by the Agency, whether or not concurred in by the Agency. Appeals will be handled in accordance with the regulations of the National Appeals Division, U.S. Department of Agriculture, published at 7 CFR part 11.

§§ 3575.14—3575.16 [Reserved]

§ 3575.17 Exception authority.

The Administrator may, in individual cases, make an exception to any requirement or provision of this subpart or address any omission of this subpart provided the Administrator determines that application of the requirement or provision, or failure to take action in the case of an omission, would adversely affect the Government's financial interest. Requests for exceptions must be in writing by the State Director.

§§ 3575.18—3575.19 [Reserved]

§ 3575.20 Eligibility.

(a) *Availability of credit from other sources.* The Agency must determine that the borrower is unable to obtain the required credit without the loan guarantee from private, commercial, or cooperative sources at reasonable rates and terms for loans for similar purposes and periods of time. This determination shall become a part of the Agency casefile. The Agency must also determine if an outstanding judgment obtained by the United States in a Federal Court (other than the U.S. Tax Court) has been entered against the borrower or if the borrower has an outstanding delinquent debt with any Federal agency. Such judgment or delinquency shall cause the potential borrower to be ineligible to receive a loan guarantee until the judgment is paid in full or otherwise satisfied or the delinquency is cured.

(b) *Legal authority and responsibility.* (1) Each borrower must have, or will obtain, the legal authority necessary to construct, operate, and maintain the proposed facility and services. They must also have legal authority for obtaining security and repaying the proposed loan.

(2) The borrower shall be responsible for operating, maintaining, and managing the facility and services, and providing for the continued availability and use of the facility and services at reasonable rates and terms.

(i) These responsibilities must be exercised by the borrower even though the facility may be operated, maintained, or managed by a third party under contract, management agreement, or written lease.

(ii) Leases may only be used when this is the only feasible way to provide the service, is the customary practice to provide such service in the State, and must provide for the borrower's management control of the facility.

(iii) Contracts, management agreements, or leases must not contain options or other provisions for transfer of ownership.

(3) The lender is responsible for reviewing any contracts, management agreements, or leases to determine that they will not adversely impact the borrower's repayment ability or the security value of the guaranteed loan.

(c) *Borrower.* (1) A public body such as a municipality, county, district, authority, or other political subdivision of a State located in a rural area.

(2) An organization operated on a not-for-profit basis such as an association, cooperative, or private corporation. For-profit corporations operated as not-for-profit corporations are eligible borrowers as long as they operate as a not-for-profit corporation for the duration of their guaranteed loans. Single member corporations or corporations owned or substantially controlled by other corporations or associations are not eligible organizations. Before a loan is made to a borrower other than a public body, the articles of incorporation or the loan agreement will include a condition similar to the following:

> If the corporation dissolves or ceases to perform the community facility objectives and functions, the board of directors shall distribute all business property and assets to one or more nonprofit corporations or public bodies. This distribution must be approved by 75 percent of the users or members and must serve the public welfare of the community. The assets may not be distributed to any members, directors, stockholders, or others having financial or managerial interest in the corporation. Nothing herein shall prohibit the corporation from paying its debts.

(3) A private nonprofit essential community facility (other than utilities)

must have significant ties with the local rural community. Such ties are necessary to ensure to the greatest extent possible that a facility under private control will carry out a public purpose and continue to primarily serve rural areas. Ties may be evidenced by items such as:

(i) Association with, or controlled by, a local public body or bodies or broadly based ownership and controlled by members of the community.

(ii) Substantial public funding through taxes, revenue bonds, or other local government sources, or substantial voluntary community funding such as would be obtained through a community-wide funding campaign.

(4) Indian tribes on Federal and State reservations and other federally recognized Indian tribes.

(d) *Facility location.* Facilities must be located in rural areas, except:

(1) For utility services such as natural gas or hydroelectric serving both rural and non-rural areas. In such cases, Agency funds may be used to finance only that portion serving rural areas, regardless of facility location.

(2) Telecommunication projects. The part of the facility located in a non-rural area must be necessary to provide the essential services to rural areas.

(e) *Facilities for public use.* All facilities financed under the provisions of this subpart shall be for public purposes.

(1) Facilities will be installed to serve any user within the service area who desires service and can be feasibly and legally served.

(2) In no case will boundaries for the proposed service area be chosen in such a way that any user or area will be excluded because of race, color, religion, sex, marital status, age, disability, or national origin. This does not preclude:

(i) Financing or constructing projects in phases when it is not practical to finance or construct the entire project at one time, and

(ii) Financing or constructing facilities where it is not economically feasible to serve the entire area, provided economic feasibility is determined on the basis of the entire system or facility and not by considering the cost of separate extensions to, or parts thereof. Additionally, the borrower must publicly announce a plan for extending service to areas not initially receiving service. Also, the borrower must provide written notice to potential users located in the areas not to be initially served.

(3) The lender will determine that, when feasible and legally possible, inequities within the proposed project's service area for the same type service proposed (i.e., gas distribution system) will be remedied by the owner on, or before, completion of the project. Inequities are defined as unjustified variations in availability, adequacy, or quality of service. User rate schedules for portions of existing systems or facilities that were developed under different financing, rates, terms, or conditions do not necessarily constitute inequities.

§§ 3575.21—3575.23 [Reserved]

§ 3575.24 Eligible loan purposes.

(a) Funds may be used to construct, enlarge, extend, or otherwise improve other essential community facilities providing essential service primarily to rural residents and rural businesses.

(1) Essential community facilities include, but are not limited to:

(i) Fire, rescue, and public safety,

(ii) Health services,

(iii) Community, social, or cultural services,

(iv) Transportation facilities such as streets, roads, and bridges,

(v) Telecommunication equipment,

(vi) Hydroelectric generating facilities and related connecting systems and appurtenances only when not eligible for financing under the authorities of the Rural Utilities Service. Funds may not be used to finance other types of electrical generating or transmitting facilities,

(vii) Supplemental and supporting structures for other rural electrification or telephone systems (including facilities such as headquarters and office buildings, storage facilities, and maintenance shops) only when not eligible for financing under the authorities of the Rural Utilities Service,

(viii) Natural gas distribution systems,

(ix) Industrial park sites (but only to the extent of land acquisition and necessary site preparation) including access ways and utility extensions to and throughout the site. Funds may not be used in connection with industrial parks to finance on-site utility systems or business and industrial buildings, and

(x) Recreational facilities.

(2) Otherwise improve includes, but is not limited to, the following:

(i) The purchase of major equipment (such as telecommunication equipment and X-ray machines) which will in themselves provide an essential service to rural residents,

(ii) The purchase of existing facilities, when necessary, either to improve or to prevent a loss of service, and

(iii) Payment of tap fees and other utility connection charges as provided in utility purchase contracts.

(b) Funds also may be used:

(1) To construct or relocate public buildings, roads, bridges, fences, or utilities and to make other public improvements necessary to the successful operation or protection of facilities authorized by paragraph (a) of this section.

(2) To relocate private buildings, roads, bridges, fences, or utilities, and other private improvements necessary to the successful operation or protection of facilities authorized in paragraph (a) of this section.

(3) To pay the following expenses (but only when such expenses are a necessary part of a loan to finance facilities authorized in paragraph (a) of this section):

(i) Reasonable fees and costs such as origination fee, loan guarantee fee, legal, engineering, architectural, fiscal advisory, recording, environmental impact analyses, archaeological surveys, possible salvage or other mitigation measures, planning and establishing or acquiring rights.

(ii) Interest on loans until the facility is self-supporting, but not for more than 2 years unless a longer period is approved by the Agency; interest on loans secured by general obligation bonds until tax revenues are available for payment, but not for more than 2 years unless a longer period is approved by the Agency's National Office; and interest on interim financing.

(iii) Costs of acquiring interest in land; rights such as water rights, leases, permits, rights-of-way, and other evidence of land or water control necessary for development of the facility.

(iv) Purchasing or renting equipment necessary to install, maintain, extend, protect, operate, or utilize facilities.

(v) Initial operating expenses for a period ordinarily not exceeding 1 year when the borrower is unable to pay such expenses.

(vi) Refinancing debts incurred by, or on behalf of, a community when all of the following conditions exist:

(A) The debts being refinanced are less than 50 percent of the total loan,

(B) The debts were incurred for the facility or service being financed or any part thereof (such as interim financing, construction expenses, etc.), and

(C) Arrangements cannot be made with the creditors to extend or modify the terms of the debts so that a sound basis will exist for making a loan.

(4) To pay obligations for construction incurred prior to filing a preapplication and application with the Agency. Construction work must not be started (and obligations for such work or materials must not be incurred) before

the Conditional Commitment for Guarantee is issued. If there are compelling reasons for proceeding with construction before the Conditional Commitment for Guarantee is issued, lenders may request Agency approval to pay such obligations and not jeopardize a guarantee from the Agency. Such request must comply with the following:

(i) Provide conclusive evidence that the contract was entered into without intent to circumvent the Agency regulations. However, the Agency is not required or obligated to pay a loss unless a written guarantee is issued,

(ii) Modify the outstanding contract to conform with the provisions of this subpart. Where this is not possible, modifications will be made to the extent practicable and, as a minimum, the contract must comply with all State and local laws and regulations as well as statutory requirements and executive orders related to the Agency financing. When construction is complete and it is impracticable to modify the contract, the borrower and lender must provide the certification required by paragraph (b)(4)(iii) of this section,

(iii) Provide a certification by an engineer or architect that any construction performed complies fully with the plans and specifications, and

(iv) The borrower and the contractor must have complied with all statutory and executive order requirements related to Agency financing for construction already performed even though the requirements may not have been included in the contract documents.

§ 3575.25 Ineligible loan purposes.

Loan funds may not be used to finance:

(a) Properties to be used for commercial rental when the borrower has no control over tenants and services offered except for industrial-site infrastructure development,

(b) Facilities primarily for the purpose of housing Federal or State agencies,

(c) Community antenna television services or facilities,

(d) Telephone systems,

(e) Facilities which are not modest in size, design, and cost,

(f) Finder's and packager's fees,

(g) Projects located within the Coastal Barriers Resource System that do not qualify for an exception as defined in section 6 of the Coastal Barriers Resource Act, 16 U.S.C. 3501 *et seq.* (available in any Agency office),

(h) New combined sanitary and storm water sewer facilities, or

(i) Projects that are located in a special flood or mudslide hazard area as designated by the Federal Emergency Management Agency in a community that is not participating in the National Flood Insurance Program.

§ 3575.26 [Reserved]

§ 3575.27 Eligible lenders.

(a) *Eligible lenders.* Eligible lenders (as defined in this section) may participate in the loan guarantee program. These lenders must be subject to credit examination and supervision by an appropriate agency of the United States or a State that supervises and regulates credit institutions. A lender must have the capability to adequately service loans for which a guarantee is requested. Eligible lenders are:

(1) Any Federal or State chartered bank or savings and loan association;

(2) Any mortgage company that is a part of a bank holding company;

(3) Bank for Cooperatives, National Rural Utilities Cooperative Finance Corporation, Farm Credit Bank of the Federal Land Bank, or other Farm Credit System institution with direct lending authority authorized to make loans of the type guaranteed by this subpart;

(4) An insurance company regulated by a State or National insurance regulatory agency;

(5) State Bond Banks or State Bond Pools; and

(6) Other lenders that possess the legal powers necessary and incidental to making and servicing guaranteed loans involving community development-type projects. These lenders must also be subject to credit examination and supervision by either an appropriate agency of the United States or a State that supervises and regulates credit institutions and provide documentation acceptable to the Agency that they have the ability to service the loan. Lenders under this category must be approved by the National Office prior to the issuance of the loan guarantee.

(b) *Conflict of interest.* When the lender's officers, stockholders, directors, or partners (including their immediate families) or the borrower, its officers, stockholders, directors, or partners (including their immediate families) own, or have management responsibilities in each other, the lender must disclose such business or ownership relationships. The Agency will determine if such relationships are likely to result in a conflict of interest. This does not preclude lender officials from being on the borrower's board of directors.

§ 3575.28 Transfer of lenders or borrowers (prior to issuance of Loan Note Guarantee).

(a) Prior to issuance of the loan guarantee, the Agency may approve the transfer of an outstanding Conditional Commitment for Guarantee from the present lender to a new eligible lender, provided:

(1) The former lender states in writing why it does not wish to continue to be the lender for this project;

(2) No substantive changes in ownership or control of the borrower has occurred;

(3) No substantive changes in the borrower's written plan, scope of work, or changes in the purpose or intent of the project has occurred; and

(4) No substantive changes in the loan agreement or Conditional Commitment for Guarantee are required.

(b) The substitute lender must execute a new application for loan and guarantee (available in any Agency office).

(c) If approved, the Agency will issue a letter of amendment to the original Conditional Commitment for Guarantee reflecting the new lender who will acknowledge acceptance of the offer in writing.

(d) Once the Conditional Commitment for Guarantee is issued, the Agency will not approve any substitution of borrowers, including changes in the form of the legal entity. Exceptions to a change in the legal entity may be requested when the original borrower is replaced with substantially the same individuals or officers with the same interest as originally approved.

§ 3575.29 Fees and charges by lender.

(a) *Routine charges and fees.* The lender may establish the charges and fees for the loan, provided they do not exceed those charged other borrowers for similar types of transactions. ''Similar types of transactions'' mean those transactions involving the same type of loan for which a non-guaranteed loan borrower would be assessed charges and fees.

(b) *Late payment fees.* Late payment charges will not be covered by the Loan Note Guarantee. Such charges may not be added to the principal and interest due under any guaranteed note. Late payment charges may be made only if:

(1) They are routinely made by the lender in all types of loan transactions;

(2) Payment has not been received within the customary timeframe allowed by the lender; or

(3) The lender agrees with the borrower, in writing, that the rate or method of calculating the late payment charges will not be changed to increase charges while the Loan Note Guarantee is in effect.

(c) *Guarantee fees.* The guaranteed loan fee will be the applicable guarantee fee rate multiplied by the principal loan amount multiplied by the percent of

guarantee. The one-time guarantee fee is paid when the Loan Note Guarantee is issued.

(1) The fee will be paid to the Agency by the lender and is nonreturnable. The lender may pass the fee to the borrower.

(2) The guarantee fee rates are available in any Agency office.

§ 3575.30 Loan guarantee limitations.

The percentage of guarantee, up to the maximum allowed by this section, is a matter for negotiation between the lender and the Agency.

(a) The maximum guarantee is 90 percent of eligible loss.

(b) The lender will retain a minimum of 5 percent of the total loan amount. The retained amount must be from the unguaranteed portion of the loan and cannot be participated to another lender.

§§ 3575.31—3575.32 [Reserved]

§ 3575.33 Interest rates.

(a) *General.* Rates will be negotiated between the lender and the borrower.

They may be either fixed or variable rates. Interest rates will be those rates customarily charged borrowers in similar circumstances in the ordinary course of business and are subject to Agency review and approval.

(b) *Variable rate publication.* A variable interest rate must be tied to a base rate published periodically in a recognized national or regional financial publication specifically agreed to by the lender and borrower. Such an agreement must be documented in the borrower or lender loan agreement.

(1) Interest rate caps and incremental adjustment limitations will also be negotiated between the lender and the borrower. Notice of any interest rate change proposed by the lender should allow a sufficient time period for the borrower to obtain any required State or other regulatory approval and to implement any user rate adjustments necessary as a result of the interest rate change. The intervals between interest rate adjustments will be specified in the loan agreement (but not more often than quarterly).

(2) The lender must incorporate within the variable rate note, the provision for adjustment of payments coincident with an interest rate adjustment. This will ensure the outstanding principal balance is properly amortized within the prescribed loan maturity and eliminate the possibility of a balloon payment at the end of the loan.

(c) *Changes.* Any change in the interest rate between the date of issuance of the Conditional Commitment for Guarantee and before the issuance of the Loan Note Guarantee must be approved by the Agency. Approval of such change will be shown as an amendment to the Conditional Commitment for Guarantee.

(d) *Different rates on guaranteed and unguaranteed portion of the loan.* It is permissible to have one interest rate on the guaranteed portion of the loan and another interest rate on the unguaranteed portion of the loan, provided the lender and borrower agree, and:

(1) The rate on the unguaranteed portion does not exceed that currently being charged on loans for similar purposes to borrowers under similar circumstances; and,

(2) The rate on the guaranteed portion of the loan will not exceed the rate on the unguaranteed portion. This requirement does not apply when the unguaranteed rate is variable and the guaranteed portion is fixed.

(e) *Multi-rates.* When multi-rates are used, the lender will provide the Agency with the overall effective interest rate for the entire loan. Multi-rate loans may be either fixed, variable, or a combination of fixed and variable. When a combination of fixed and variable interest rates are used, the interest rate for the unguaranteed portion will not be lower than the guaranteed portion of the loan.

§ 3575.34 Terms of loan repayment.

(a) *General.* Principal and interest on the loan will be due and payable as provided in the note except, any interest accrued as the result of the borrower's default on the guaranteed loan over and above that which would have accrued at the note rate on the guaranteed loan will not be guaranteed by the Agency. The lender will structure repayments as established in the loan agreement between the lender and borrower. Ordinarily, such installments will be scheduled for payment as agreed upon by the lender and borrower on terms that reasonably ensure repayment of the loan. However, the first installment to include a repayment of principal may be scheduled for payment after the project is operable and has begun to generate income. Such installment must be due and payable within 3 years from the date of the note and at least annually thereafter. Interest will be due at least annually from the date of the note. Monthly payments will be required except for borrowers with income limited to less frequent intervals.

(b) *Term length.* The maximum time allowable for final maturity for a guaranteed CP loan will be limited to the useful life of the facility, not to exceed 40 years.

(c) *Balloon payments.* The principal balance should be properly amortized within the prescribed loan maturity. Balloon payments at the end of the loan are prohibited.

§§ 3575.35—3575.36 [Reserved]

§ 3575.37 Insurance and fidelity bonds.

The lender must provide evidence that the borrower has adequate insurance and fidelity bond coverage by loan closing or start of construction, whichever occurs first. Adequate coverage must be maintained for the life of the loan and is subject to Agency review and approval.

§§ 3575.38—3575.39 [Reserved]

§ 3575.40 Equal opportunity and Fair Housing Act requirements.

(a) *Equal Credit Opportunity Act.* The lender will comply with the requirements of title V of the Equal Credit Opportunity Act (15 U.S.C. 1691 *et seq.*). (See the Federal Reserve Board Regulation, 12 CFR part 202.)

(b) *Fair Housing Act.* Certain housing-related projects such as nursing homes, group homes, or assisted-living facilities must comply with the requirements of the Fair Housing Act (42 U.S.C. 3601 *et seq.*). This includes completion of an Affirmative Fair Housing Marketing Plan and compliance with the Housing and Urban Development accessibility guidelines except for areas open to the public which are covered by the Americans with Disabilities Act (42 U.S.C. 12181 *et seq.*). The lender will determine that the borrower has a valid plan in effect at all times.

§ 3575.41 [Reserved]

§ 3575.42 Design and construction requirements.

The lender will provide the Agency with a written certification at the end of construction that all funds were utilized for authorized purposes. The borrower and the lender will authorize designs and plans based upon the preliminary architectural and engineering reports or plans approved by the lender and concurred in by the Agency. The borrower will take into consideration any lender or Agency comments when the facility is being designed.

(a) *Architectural and engineering practices.* All project facilities must be designed utilizing accepted architectural and engineering practices and must conform to applicable Federal, State, and local codes and requirements. The lender must ensure that the planned project will be completed within the available funds and, once

completed, will be suitable for the borrower's needs.

(b) *Construction monitoring.* The lender will monitor the progress of construction and undertake the reviews and inspections necessary to ensure that construction proceeds in accordance with the approved plans, specifications, and contract documents and that funds are used for eligible project costs. The lender must expeditiously report any problems in project development to the Agency.

(c) *Equal employment opportunities.* For all construction contracts in excess of $10,000, the contractor must comply with Executive Order 11246 entitled ''Equal Employment Opportunity'' as amended and as supplemented by applicable Department of Labor regulations (41 CFR part 60–1). The borrower and lender are responsible for ensuring that the contractor complies with these requirements.

(d) *Americans with Disabilities Act.* Community Facilities loans which involve the construction of, or addition to, facilities that accommodate the public and commercial facilities as defined by the Americans with Disabilities Act (42 U.S.C. 12181—*et seq.*) must comply with that Act. The lender and borrower are responsible for compliance.

§ 3575.43 Other Federal, State, and local requirements.

In addition to the specific requirements of this subpart and beginning on the date of issuance of the Loan Note Guarantee, proposals for facilities financed in whole or in part with a loan guaranteed by the Agency will be coordinated with all appropriate Federal, State, and local agencies. Borrowers and lenders will be required to comply with any Federal, State, or local laws or regulatory commission rules which are in existence and which affect the project including, but not limited to:

(a) Organization and authority to design, construct, develop, operate, and maintain the proposed facilities;

(b) Borrowing money, giving security, and raising revenues for repayment;

(c) Land use zoning;

(d) Health, safety, and sanitation standards; and

(e) Protection of the environment and consumer affairs.

§§ 3575.44–3575.46 [Reserved]

§ 3575.47 Economic feasibility requirements.

All projects financed under the provisions of this section must be based on taxes, assessments, revenues, fees, or other sources of revenues in an amount sufficient to provide for facility operation and maintenance, a reasonable reserve, and debt payment. Other sources of revenue or guarantors are particularly important in considering the feasibility of recreation-type loans. The lender is responsible for determining the credit quality and economic feasibility of the proposed loan and must address all elements of the credit quality in a written financial feasibility analysis which includes adequacy of equity, cash flow, security, history, and management capabilities. Financial feasibility reports must take into consideration any interest rate adjustment which may be instituted under the terms of the note. The lender's financial credit analysis may also serve as the feasibility analysis when sufficient evidence is included to determine economic feasibility as well as financial viability.

(a) *Financial feasibility.* The borrower, lender, or other qualified entity must prepare the financial feasibility analysis (suggested financial feasibility guidelines are available in any Agency office) in the following instances:

(1) Facilities primarily used for fire and rescue services;

(2) Facilities that are not dependent on facility revenues for debt payment;

(3) Loans of less than $500,000; or

(4) Projects in which the borrower has operated similar facilities on a financially successful basis.

(b) *Utility projects.* The borrower's consulting engineer may complete the financial feasibility analysis for utility systems.

(c) *Other community facilities.* Financial feasibility reports for all other facilities must be prepared by a qualified entity not having a direct interest in the management of the facility. The lender may prepare the feasibility study if qualified staff is available.

(d) *Exceptions.* The Agency loan approval official may exempt the lender from the requirement for an independent financial feasibility report (when requested by the borrower and the lender) provided the approval official determines that the financial feasibility analysis prepared by the borrower fairly represents the financial feasibility of the facility and the financial feasibility analysis contains an accurate projection of the usage, revenues, and expenses of the facility.

(e) *Insufficient information.* When the lender or Agency has insufficient information to determine the borrower's repayment ability, an independent feasibility analysis is required.

§ 3575.48 Security.

(a) *Lender responsibility.* The lender is responsible for obtaining and maintaining proper and adequate security to protect the interest of the lender, the holder, and the Government.

(b) *Type of security.* Security must be of such a nature that repayment of the loan is reasonably ensured when considered with the integrity and ability of project management, soundness of the project, and the borrower's prospective earnings. The security may include, but is not limited to, the following: General obligation bonds, revenue bonds, pledge of taxes or assessments, assignment of facility revenue, land, easements, rights-of-way, water rights, buildings, machinery, equipment, accounts receivable, contracts, cash, or other accounts or assignments of leases or leasehold interest.

(c) *Separate security.* All security must secure the entire loan. The lender will not take separate security to secure only the unguaranteed portion of the loan. The lender will not require compensating balances or certificates of deposit as a means of eliminating the lender's exposure on the unguaranteed portion of the loan.

§§ 3575.49—3575.51 [Reserved]

§ 3575.52 Processing.

(a) *Preapplications.* (1) The preapplication package must be submitted either alone or the necessary information may be submitted simultaneously with the application. The preapplication package will contain:

(i) An Application for Federal Assistance on a form provided by the Agency (available in any Agency office);

(ii) State intergovernmental or other type review comments and recommendations for the borrower's project (clearinghouse comments, if applicable);

(iii) Supporting documentation necessary to make an eligibility determination such as financial statements, audits, copies of organizational documents, existing debt instruments, etc.; and

(iv) Documentation of lender eligibility in accordance with § 3575.27.

(2) If the Agency determines that the project may meet requirements and is likely to be funded, the lender must submit a complete application if it has not previously submitted one. The Agency must do an environmental review before further processing will be completed.

(b) *Applications.* Contents of application package:

(1) Application for Loan and Guarantee on a form prescribed by the Agency (available in any Agency office);
(2) Proposed loan agreement;
(3) Request for Environmental Information (available in any Agency office);
(4) Preliminary architectural or engineering report;
(5) Cost estimates;
(6) Appraisal reports (as appropriate);
(7) Credit reports;
(8) Financial feasibility analysis and report; and
(9) Any additional information required.

§ 3575.53 Evaluation of application.

If the Agency determines that the borrower is eligible, the proposed loan is for an eligible purpose, there is reasonable assurance of repayment ability, sufficient collateral and equity exists, the proposed loan complies with all applicable statutes and regulations, the environmental review is complete and considered in determining compliance, and adequate funds are available, the Agency will provide the lender and the borrower with the Conditional Commitment for Guarantee, listing all conditions for the guarantee. Applicable requirements will include the following:
(a) Approved use of guaranteed loan funds (source and use of funds);
(b) Rates and terms of the loan;
(c) Scheduling of payments;
(d) Number of customers;
(e) Security and lien priority;
(f) Appraisals;
(g) Insurance and bonding;
(h) Financial reporting;
(i) Equal opportunity and nondiscrimination;
(j) Environment or mitigation;
(k) Americans with Disabilities Act;
(l) By-laws and articles of incorporation changes; and
(m) Other requirements necessary to protect the Government.

§§ 3575.54–3575.58 [Reserved]

§ 3575.59 Review of requirements.

(a) *Lender and borrower.* The lender and borrower must complete and sign the Acceptance of Conditions and return a copy to the Agency as soon as possible. Notwithstanding the preceding sentence, if certain conditions cannot be met, the lender and borrower may propose alternate conditions for Agency consideration.

(b) *Cancellation.* If the lender decides at any time after receiving a Conditional Commitment for Guarantee that it no longer wants a guarantee, the lender must immediately advise the Agency of the cancellation.

(c) *Modifications.* The lender agrees that once the Conditional Commitment for Guarantee is issued and accepted by the lender and borrower, it will not be modified as to the scope of the project, overall facility concept, project purpose, use of proceeds, or other terms and conditions.

§§ 3575.60–3575.62 [Reserved]

§ 3575.63 Conditions precedent to issuance of the Loan Note Guarantee.

The Loan Note Guarantee will not be issued until:
(a) The lender certifies that:
(1) No changes have been made in the lender's loan conditions and requirements since the issuance of the Conditional Commitment for Guarantee except those approved in the interim by the Agency in writing.
(2) All planned property acquisition has been completed and all development has been substantially completed in accordance with plans, specifications, and applicable building codes. No costs have exceeded the amounts approved by the lender and the Agency.
(3) Required insurance is in effect.
(4) All equal opportunity and Fair Housing Plan requirements have been met.
(5) The loan has been properly closed and the required security instruments have been obtained on any after-acquired property that cannot be covered initially under State statutory provisions.
(6) The borrower has marketable title to the collateral then owned by the borrower, subject to the instrument securing the loan to be guaranteed and subject to any other exceptions approved, in writing, by the Agency.
(7) When required, the entire amount of the loan for working capital has been disbursed except in cases where the Agency has approved disbursement over an extended time.
(8) All other requirements of the Conditional Commitment for Guarantee have been met.
(9) Lien priorities are consistent with requirements of the Conditional Commitment for Guarantee.
(10) The loan proceeds have been disbursed for purposes and in amounts consistent with the Conditional Commitment for Guarantee and as specified on the application for the guaranteed loan. A copy of a detailed statement by the lender detailing the use of loan funds will be attached to support this certification.
(11) There has been no substantive adverse change in the borrower's financial condition nor any other adverse change in the borrower during the period of time from the Agency's issuance of the Conditional Commitment for Guarantee to issuance of the Loan Note Guarantee. The lender's certification must address all adverse changes of the borrower and the guarantors. For purposes of this paragraph, the term borrower includes any parent, affiliate, or subsidiary of the borrower.
(12) All Federal, State, and local design and construction requirements have been met.
(13) The lender understands and will meet the requirements of the Debt Collection Act (chapter 37 of title 31 of the United States Code).
(14) The lender would not make the loan without an Agency guarantee.
(b) The lender has executed and delivered the Lender's Agreement and closing report for the guaranteed loan along with the appropriate guarantee fee.
(c) The lender has advised the Agency of plans to sell or assign any part of the loan as provided in the Lender's Agreement.
(d) Where applicable, the lender must certify that the borrower has obtained:
(1) A legal opinion relative to the title to rights-of-way and easements. Lenders are responsible for ensuring that borrowers have obtained valid, continuous, and adequate rights-of-way and easements needed for the construction, operation, and maintenance of a facility.
(2) A title opinion or title insurance showing ownership of the land and all mortgages or other lien defects, restrictions, or encumbrances, if any. It is the responsibility of the lender to ensure that the borrower has obtained and recorded such releases, consents, or subordinations to such property rights from holders of outstanding liens or other instruments as may be necessary for the construction, operation, and maintenance of the facility and to provide the required security. For example, when a site is for major structures for utility-type facilities (such as a gas distribution system) and the lender and borrower are able to obtain only a right-of-way or easement on such a site rather than a fee simple title, such a title opinion must be requested.
(e) For loans exceeding $150,000, the lender has certified its compliance with the Anti-Lobby Act (18 U.S.C. 1913). Also, if any funds have been, or will be, paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this

commitment providing for the United States to guarantee a loan, the lender shall completely disclose such lobbying activities in accordance with 31 U.S.C. 1352.

(f) If the Loan Note Guarantee cannot be issued before the Conditional Commitment expires, the lender must submit a written request for an extension of the expiration date. The lender must document and certify to paragraph (a)(1) and (a)(11) of this section specifically identifying any modifications.

(g) Coincident with, or immediately after, loan closing, the lender will contact the Agency and provide those documents and certifications required in this section. For loans to public bodies, lenders may require an opinion from recognized bond counsel regarding the adequacy of the preparation and issuance of the debt instruments. Only when the Agency is satisfied that all conditions for the guarantee have been met will the Loan Note Guarantee be executed.

§ 3575.64 Issuance of Lender's Agreement, Loan Note Guarantee, and Assignment Guarantee Agreement.

(a) *Lender's Agreement.* If the Agency finds that all requirements have been met, the lender and the Agency will execute the Lender's Agreement. The original will be retained by the Agency and a signed duplicate original will be retained by the lender. A separate Lender's Agreement must be executed for each loan to be guaranteed by the Agency.

(b) *Loan Note Guarantee.* (1) Upon receipt of the executed Lender's Agreement and after all requirements have been met, the Agency will execute the Loan Note Guarantee. All originals of the Loan Note Guarantee will be provided to the lender and attached to the note.

(2) If the lender has selected the multi-note system, a Loan Note Guarantee will be prepared and attached to each note the borrower issues. All the notes will be listed on the Loan Note Guarantee. Not more than ten notes will be issued for the guaranteed portion (unless the Agency and borrower agree otherwise) and one note issued for the unguaranteed portion.

(c) *Assignment of Guarantee.* In the event the lender assigns the guaranteed portion of the loan to a holder, the lender, holder, and Agency will execute an Agency prescribed Assignment Guarantee Agreement.

(d) *Failure to meet conditions.* If the Agency determines that it cannot execute the Loan Note Guarantee because all requirements have not been met, the lender will have a reasonable period within which to satisfy the objections. If the lender satisfies the objections within the time allowed, the guarantee will be issued.

(e) *Loan closing report.* The lender will prepare and deliver a guaranteed loan closing report for each loan to be guaranteed and a guarantee fee to the Agency in return for the Loan Note Guarantee.

§ 3575.65 Lender's sale or assignment of the guaranteed portion of loan.

The lender may retain all of the guaranteed loan. The lender must not sell or participate any amount of the guaranteed or non-guaranteed portion of the loan to the borrower or to members of the borrower's immediate families, the borrower's officers, directors, stockholders, other owners, or a subsidiary or affiliate. Disposition of the guaranteed portion of a loan may not be made prior to full disbursement, completion of construction, and acquisition of real estate and equipment without the prior written approval of the Agency. If the lender desires to market all or part of the guaranteed portion of the loan at, or subsequent to, loan closing, the loan must not be in default.

(a) *Assignment.* Any sale or assignment by the lender of the guaranteed portion of the loan must be accomplished in accordance with the conditions in the Lender's Agreement.

(b) *Participation.* The lender may obtain participation in the loan under its normal operating procedures.

(c) *Minimum retention.* The lender is required to hold in its own portfolio or retain a minimum of 5 percent of the total loan amount. This amount must be of the non-guaranteed portion of the loan and cannot be participated to another. The lender may sell the remaining amount of the non-guaranteed portion of the loan only through participation.

§§ 3575.66—3575.68 [Reserved]

§ 3575.69 Loan servicing.

(a) *Lender responsibilities.* The lender is responsible for servicing the entire loan in accordance with the lender's loan agreement. The unguaranteed portion of the loan will not be paid first nor given any preference or priority over the guaranteed portion of the loan. The lender is responsible for taking all servicing actions that a prudent lender would perform in servicing a portfolio of loans that are not guaranteed. This responsibility includes, but is not limited to, the collection of payments; obtaining compliance with the covenants and provisions in the note, loan agreement, security instrument, or any supplemental agreements; obtaining and analyzing financial statements; verifying the payment of taxes and insurance premiums; and maintaining liens on collateral. The lender must notify the Agency of any violation of the loan agreement with the borrower within 30 days of such violation.

(b) *Financial reports.* The lender must obtain the financial statements required by the Loan Agreement. The lender must submit the borrower's annual financial statements to the Agency within 120 days of the end of the borrower's fiscal year. The lender must analyze the financial statements and provide the Agency with a written summary of the lender's analysis and conclusions, including trends, strengths, weaknesses, extraordinary transactions, and other indications of the financial condition of the borrower. Additionally, when applicable, the lender will require an audit in accordance with Office of Management and Budget (OMB) circulars (available in any Agency office).

(c) *Delinquent loans.* The lender will service delinquent loans in accordance with the Lender's Agreement and reasonable and prudent lending standards.

(d) *Loan balances.* The lender must report to the Agency the outstanding principal and interest balance on each guaranteed loan semiannually.

(e) *Collateral inspections.* The lender will inspect the collateral as often as necessary to properly service the loan.

§§ 3575.70—3575.72 [Reserved]

§ 3575.73 Replacement of loss, theft, destruction, mutilation, or defacement of Loan Note Guarantee or Assignment Guarantee Agreement.

(a) *Replacement of Loan Note Guarantee.* The Agency may issue a replacement Loan Note Guarantee or Assignment Guarantee Agreement which may have been lost, stolen, destroyed, mutilated, or defaced to the lender or holder upon receipt of a certificate of loss and an indemnity bond in accordance with this section.

(b) *Lender responsibilities.* When a Loan Note Guarantee or Assignment Guarantee Agreement is lost, stolen, destroyed, mutilated, or defaced while in the custody of the lender or holder, the lender will coordinate the activities of the party who seeks the replacement documents and will submit the required documents to the Agency for processing. The requirements for replacement are as follows:

(1) A certificate of loss properly notarized which includes:

(i) Legal name and present address of either the lender or the holder who is requesting the replacement forms;

(ii) Legal name and address of the lender of record;

(iii) Capacity of person certifying;

(iv) Full identification of the Loan Note Guarantee or Assignment Guarantee Agreement, including the name of the borrower, Agency case number, date of the Loan Note Guarantee, Assignment Guarantee Agreement, face amount of the evidence of debt purchased, date of evidence of debt, present balance of the loan, percentages of guarantee and, if Assignment Guarantee Agreement, the original named holder and the percentage of the guaranteed portion of the loan assigned to that holder. Any existing parts of the document to be replaced must be attached to the certificate;

(v) A full statement of circumstances of the loss, theft, or destruction of the Loan Note Guarantee or Assignment Guarantee Agreement; and

(vi) The holder shall present evidence demonstrating current ownership of the Loan Note Guarantee and Note or Assignment Guarantee Agreement. If the present holder is not the same as the original holder, a copy of the endorsement of each successive holder in the chain of transfer from the initial holder to present holder must be included. If copies of the endorsement cannot be obtained, best available records of transfer must be presented to the Agency (e.g., order confirmation, canceled checks, etc.).

(2) An indemnity bond acceptable to the Agency shall accompany the request for replacement except when the holder is the United States, a Federal Reserve Bank, a Federal Government corporation, a State or Territory, or the District of Columbia.

(3) All indemnity bonds must be issued and payable to the United States of America. The bond shall be in an amount not less than the unpaid principal and interest. The bond shall hold the Government harmless against any claim or demand which might arise or against any damage, loss, costs, or expenses which might be sustained or incurred by reasons of the loss or replacement of the instruments.

§ 3575.74 [Reserved]

§ 3575.75 Defaults by borrower.

(a) *Lender notification to Agency.* The lender must notify the Agency when a borrower is 30 days past due on a payment, has not met its responsibilities of providing the required financial statements, or is otherwise in default. The lender will continue to keep the Agency informed on a bimonthly basis until such time as the loan is no longer in default. If a monetary default exceeds 60 days, the lender will arrange a meeting with the borrower to resolve the default. The lender will provide a summary of the meeting and any decisions or actions agreed upon.

(b) *Servicing options.* In considering servicing options, the prospects for providing a permanent cure without adversely affecting the risks to the Agency and the lender must be the paramount objective. Temporary curative actions (such as payment deferments or collateral subordination) must strengthen the loan and be in the best financial interest of the lender and the Agency. Some of these actions may require concurrence of the holder.

(c) *Multi-note.* If the loan was closed with the multi-note option, the lender may need to possess all notes to take some servicing actions. In those situations when the Agency is holder of some of the notes, the Agency may endorse the notes back to the lender, provided a proper receipt is received from the lender which defines the reason for the transfer. Under no circumstances will the Agency endorse the original Loan Note Guarantee to the lender.

§§ 3575.76—3575.77 [Reserved]

§ 3575.78 Repurchase of loan.

(a) *Repurchase by lender.* The lender has the option to repurchase the loan from a holder within 30 days of written demand from the holder when the borrower is in default not less than 60 days on payment. The repurchase will be for an amount equal to the unpaid guaranteed portion of principal and accrued interest less the lender's servicing fee. The guarantee does not cover the note interest to the holder on the guaranteed loan accruing after 90 days from the date of the demand letter to the lender. The holder will concurrently send a copy of the demand to the Agency. The lender will accept an assignment without recourse from the holder upon repurchase. The lender is encouraged to repurchase the loan to facilitate the accounting of funds, resolve the problem, and permit the borrower to cure the default, where reasonable. The lender will notify the holder and the Agency of its decision within 30 days of receipt of demand from the holder.

(b) *Agency repurchase.* (1) If the lender does not repurchase as provided in paragraph (a) of this section, the Agency will purchase from the holder the unpaid principal balance of the guaranteed portion together with accrued interest to date of repurchase (less the lender's servicing fee) within 30 days after written demand to the Agency. The guarantee will not cover the note interest to the holder on the guaranteed loan accruing after 90 days from the date of the original demand letter. The lender shall not charge the Agency any servicing fees nor are any such fees collectible from the Agency.

(2) The holder's demand to the Agency must include a copy of the written demand made upon the lender. The holder or duly authorized agent must also include evidence of the right to require payment from the Agency. Such evidence will consist of either the original of the Loan Note Guarantee properly endorsed to the Agency or the original of the Assignment Guarantee Agreement properly assigned to the Agency without recourse including all rights, title, and interest in the loan. The Agency will be subrogated to all rights of the holder. The holder must include in the demand the amount due including unpaid principal, unpaid interest to date of demand, and interest subsequently accruing from the date of demand to the proposed payment date. Unless otherwise agreed to by the Agency, such proposed payment will not be later than 30 days from the date of demand.

(3) The lender must promptly provide the Agency with the information necessary for the Agency's determination of the appropriate amount due the holder upon the Agency's notification to the lender of the holder's demand for payment. This information must be certified by an authorized officer of the lender. Any discrepancy between the amount claimed by the holder and the information submitted by the lender must be resolved before payment will be approved. The Agency will notify both parties and such conflict will suspend the running of the 30-day payment requirement.

(4) Any purchase by the Agency does not change, alter, or modify any of the lender's obligations to the Agency arising from the loan or guarantee nor does it waive any of the Agency's rights against the lender. The Agency may set off against the lender all rights inuring to the Agency as the holder of the instrument against the Agency's obligation to the lender under the Loan Note Guarantee.

(c) *Repurchase for servicing.* When the lender determines that repurchase of the guaranteed portion of the loan is necessary to service the loan, the holder must sell the guaranteed portion to the lender for the unpaid principal and

interest balance (less the lender's servicing fee). The guarantee does not cover interest accruing after 90 days from the date the lender's or Agency's letter requesting the holder to tender its guaranteed portion. The lender must not repurchase from the holder for arbitrage purposes to further its own financial gain. Any repurchase must be made only after the lender obtains the Agency written approval. If the lender does not repurchase the portion from the holder, the Agency may, at its option, purchase such guaranteed portion for servicing purposes.

§ 3575.79 [Reserved]

§ 3575.80 Interest rate changes after loan closing.

(a) *General.* Subject to the restrictions below, the borrower, lender, and holder (if any) may collectively effect a permanent reduction in the interest rate on the guaranteed loan at any time during the life of the loan on written agreement by all of the applicable parties. After such a permanent reduction, the Loan Note Guarantee will only cover losses of interest at the reduced interest rate. The Agency must be notified by the lender, in writing, within 10 calendar days of the change. When the Agency is a holder, it will concur only when it is demonstrated that the change is more viable than liquidation and that the Government's financial interests are not adversely affected. Factors which will be considered in making such determination are the Government's cost of borrowing money and the project's enhancement of rural development. The monetary recovery must be greater than the liquidation recovery, and a financial feasibility analysis must show the project's continued viability.

(1) Fixed rates cannot be changed to variable rates to reduce the interest rate to the borrower unless the variable rate has a ceiling which is less than the original fixed rate.

(2) Variable rates can be changed to a lower fixed rate. In a final loss settlement when qualifying rate changes are made with the required written agreements and notification, the interest will be calculated for the periods the given rates were in effect. The lender must maintain records which adequately document the accrued interest claimed.

(3) The lender is responsible for the legal documentation of interest rate changes. However, the lender may not issue a new note.

(b) *Increases.* No increases in interest rates will be permitted under the loan guarantee except the normal fluctuations in approved variable interest rate loans.

§ 3575.81 Liquidation.

Liquidation will occur when the lender concludes that liquidation of the guaranteed loan is necessary because of default or third party actions that the borrower cannot, or will not, cure or eliminate within a reasonable period of time and the Agency concurs with the lender; or the Agency, at any time, independently concludes that liquidation is necessary. The lender will proceed as expeditiously as possible, including giving any notices or taking any legal actions required by the security instruments.

(a) *General.* If a lender has made a loan guaranteed by the Agency under previous regulations, the lender has the option to liquidate the loan under the provisions of this subpart or under the provisions of previous regulations. The lender will notify the Agency in writing within 10 days after its decision to liquidate, which regulatory provisions it chooses to use. The lender may not choose some provisions of one regulation and other provisions of the other regulation.

(b) *Acquiring property titles.* If a lender acquires title to property, the Agency may elect to permit the lender the option of calculating the final loss settlement using the net proceeds received at the time of the ultimate disposition of the property. The lender must submit to the Agency a written request to use this option within 15 days of acquiring title and the Agency must agree, in writing, prior to the lender submitting any request for estimated loss payment.

(c) *Liquidation plan.* The lender will (within 30 days after a decision to liquidate) submit to the Agency, in writing, a proposed, detailed liquidation plan. Upon approval by the Agency of the liquidation plan, the lender will commence liquidation. The lender's liquidation plan must include, but is not limited to, the following:

(1) Such proof as the Agency requires to establish the lender's ownership of the guaranteed loan notes and related security instruments, a copy of the payment ledger or other documentation which reflects the outstanding loan balance and accrued interest to date, and the method of computing the interest;

(2) A complete list of collateral;

(3) The recommended liquidation methods for making the maximum collection possible on the indebtedness and the justification for such methods, including the recommended action for acquiring and disposing of all collateral;

(4) Necessary steps for preservation of the collateral;

(5) Copies of the borrower's latest available financial statements;

(6) An itemized list of estimated liquidation expenses expected to be incurred and justification for each expense;

(7) A schedule to periodically report to the Agency on the progress of the liquidation;

(8) Estimated protective advance amounts with justification;

(9) Proposed protective bid amounts on collateral to be sold at auction and a discussion of how the amounts were determined;

(10) If a voluntary conveyance is considered, the proposed amount to be credited to the guaranteed debt;

(11) Legal opinions, as needed; and

(12) If the outstanding balance of principal and interest is less than $250,000, the lender will obtain an estimate of fair market and potential liquidation value of the collateral. If the outstanding balance of principal and interest is $250,000 or more, the lender will obtain an independent appraisal report on all collateral securing the loan which will reflect the fair market value and potential liquidation value. The independent appraiser's fee will be shared equally by the Agency and the lender.

(d) *Partial liquidation plan.* If actions are necessary to immediately preserve and protect the collateral, a partial liquidation plan may be submitted and, when approved, must be followed by a complete liquidation plan prepared by the lender.

(e) *Disposition of collateral.* Disposition of collateral acquired by the lender must be approved, in writing, by the Agency when:

(1) The lender's cost to acquire the collateral of a borrower exceeds the potential recovery value of the security and the lender proposes abandoning the collateral in lieu of liquidation; or

(2) The acquired collateral is to be sold to the borrower, borrower's stockholders or officers, or the lender or lender's stockholders or officers.

(f) *Agency liquidation.* The Agency will liquidate at its option only when it is a holder and there is reason to believe the lender is not likely to initiate liquidation efforts that will result in maximum recovery. When the Agency liquidates, reasonable liquidation expenses will be assessed against the proceeds derived from the sale of the collateral.

(g) *Final loss payment.* Final loss payments will be made only after all collateral has been properly accounted for and liquidation expenses are

determined to be reasonable and within approved limits. Any estimated loss payments made to the lender will be credited against the final loss on the guaranteed loan. The amount of an estimated loss payment must be credited as a deduction from the principal balance of the loan.

§ 3575.82 [Reserved]

§ 3575.83 Protective advances.

Protective advances can only be added to the loan account for purposes of requirements to preserve the value of the security. Protective advances constitute an indebtedness of the borrower to the lender and must be secured by collateral to the same extent as principal and interest. Protective advances include, but are not limited to, advances made for taxes, annual assessments, ground rent, hazard and flood insurance premiums affecting the collateral (including any other expenses necessary to protect the collateral). Attorney fees are not a protective advance.

(a) *Agency approval.* The Agency must approve, in writing, all protective advances on loans within its loan approval authority which exceed a total cumulative advance amount of $5,000 to the same borrower. Protective advances must be reasonable when associated with the value of the collateral being preserved.

(b) *Preserving collateral.* When considering protective advances, sound judgment must be exercised in determining that the additional funds advanced will actually preserve collateral and recovery is actually enhanced by making the advance.

§ 3575.84 Additional loans or advances.

The lender will not make additional expenditures or new loans to the borrower without first obtaining the written approval of the Agency even though such expenditures or loans will not be guaranteed.

§ 3575.85 Bankruptcy.

(a) *Calculating losses.* Report of Loss form (available in any Agency office) will be used for calculating estimated and final loss determinations.

(b) *Lender responsibility.* The lender is responsible for protecting the guaranteed loan debt and all the collateral securing it in bankruptcy proceedings. These responsibilities include, but are not limited to, the following:

(1) Filing a proof of claim, where necessary, and all necessary papers and pleadings;

(2) Attending and, where necessary, participating in meetings of the creditors and all court proceedings;

(3) Immediately seeking adequate protection of the collateral if it is subject to being used by the trustee in bankruptcy or the debtor in possession;

(4) Where appropriate, seeking involuntary conversion of a pending chapter 11 case to a liquidation proceeding or seeking dismissal of the proceedings; and

(5) Keeping the Agency adequately and regularly informed, in writing, of all aspects of the proceedings.

(c) *Appraisals.* In a chapter 9 or chapter 11 reorganization, the lender must obtain an independent appraisal of the collateral if the Agency believes an independent appraisal is necessary. The Agency and the lender will share the appraisal fee equally.

(d) *Liquidation expenses.* Only expenses authorized by the court of chapter 11 reorganizations, or chapters 11 or 7 liquidation (unless the liquidation is by the lender), may be deducted from the collateral proceeds.

(e) *Repurchase from the holder.* The Agency or the lender, with the approval of the Agency, may initiate the repurchase of the unpaid guaranteed portion of the loan from the holder. If the lender is the holder, an estimated loss payment may be filed at the initiation of a chapter 7 proceeding or after a chapter 11 proceeding becomes a liquidation proceeding. Any loss payment on loans in bankruptcy must be approved by the Agency.

(f) *Chapter 11 bankruptcy.* If a borrower has filed for protection under chapter 11 of the United States Code for a reorganization (but not chapter 13) and all or a portion of the debt has been discharged, the lender may request an estimated loss payment of the guaranteed portion of the accrued interest and principal discharged by the court. If the court approves revisions to the chapter 11 reorganization plan, subsequent estimated loss payments may be requested in accordance with the court approved changes. Once the reorganization plan has been satisfactorily completed, the lender is responsible for submitting the documentation necessary for the Agency to review and adjust the estimated loss claim to reflect any actual discharge of principal and interest and to reimburse the lender for any court ordered interest-rate reduction under the terms of the reorganization plan.

(g) *Agency approval of estimated liquidation expenses.* The Agency must approve, in advance and in writing, the lender's estimated liquidation expenses of collateral in a liquidation if the liquidation is performed by the lender. These expenses must be reasonable and customary and not include in-house expenses of the lender.

(h) *Reconciliation.* In the event that the estimated loss payment exceeds the actual loss, the lender will reimburse the Agency the amount in excess of the actual loss plus interest at the note rate from the date of the estimated loss payment.

§§ 3575.86—3575.87 [Reserved]

§ 3575.88 Transfers and assumptions.

(a) *General.* For all transfers and assumptions, the lender must concur in the plans for disposition of funds in the transferor's debt service, reserve, and operation and maintenance account. The Agency will approve, in writing, transfers and assumptions of loans to transferees who will continue the original purpose of the guaranteed loan subject to the following applicable provisions:

(1) When the transaction is to a member of the borrower's organization, it will be at an amount which will not result in a loss to the lender.

(2) Transfers to eligible borrowers will receive preference if recovery to the lender from the sale price is not less than it would be if the transfer was to an ineligible borrower.

(3) The present borrower is unable or unwilling to accomplish the objectives of the guaranteed loan, and the transfer will be to the lender's and Agency's advantage.

(4) The transferee will assume an amount at least equal to either the present market value or the debt, whichever is less.

(b) *Transfers to an eligible borrower.* (1) The total indebtedness may be transferred to an eligible borrower on the same terms.

(2) The total indebtedness may be transferred to another eligible borrower on different terms not to exceed those terms for which an initial guaranteed loan can be made.

(3) Less than the total indebtedness may be transferred to another eligible borrower on the same or different terms and the pro rata share of any eligible loss paid to the lender.

(4) A guaranteed loan for which the transferee is eligible may be made in connection with a transfer subject to the policies and procedures governing the type of loan being made.

(5) If the transferor is to receive a payment for the equity, the total debt must be assumed.

(c) *Ineligible borrower.* Transfers to ineligible borrowers are considered only when needed as a method for servicing

problem cases when an eligible transferee is not available. Transfers should not be considered as a means by which members can obtain equity or as a method of providing a source of easy credit for purchasers. Transfers must meet the following requirements:

(1) All transfers to ineligible borrowers will include a one-time nonrefundable transfer fee to the Agency of no more than one percent. Transfer fees will be collected, and payments applied, in accordance with paragraph (d) of this section.

(2) For all loans covered by this subpart, the Agency may approve a transfer of indebtedness to, and assumption of, a loan by a transferee who does not meet the eligibility requirements for the kind of loan being assumed when the ineligible borrower will:

(i) Make a significant down payment, and

(ii) Agree to pay the remaining balance within not more than 15 years. Installments will be at least equal to the amount amortized over a period not greater than the remaining life of the debt being transferred, and the balance will be due the fifteenth year.

(3) Interest rates to ineligible transferees will be the rate specified in the note of the transferor or the rates customarily charged borrowers in similar circumstances in the ordinary course of business and are subject to Agency review and approval. The rates may be either fixed or variable.

(i) Transferees must have the ability to repay as determined by the lender the debt according to the Assumption Agreement and must have the legal authority to enter into the contract. The transferee will submit a current balance sheet to the lender. The lender will obtain and analyze the credit history of the transferee.

(ii) The transferor may receive equity payments only when the full amount of the debt is assumed. However, equity payments will not be made on more favorable terms than those on which the balance of the debt will be paid.

(d) *Transfer fees.* Transfer fees are a one-time nonrefundable cost to be collected by the lender at the time of application or proposal.

(1) The transfer fees will be a standard fee plus the cost of the appraisal.

(2) The lender will collect and submit the fee to the Agency.

(3) The Agency may waive the transfer fee if it determines that such waiver is in the best interest of the Agency.

(e) *Processing transfers and assumptions.* (1) In any transfer and assumption case, the transferor (including any guarantor) may be released from liability by the lender only with prior Agency written concurrence and only when the value of the collateral being transferred is at least equal to the amount of the loan, or part of the loan, being assumed. If the transfer is for less than the entire debt:

(i) The Agency must determine that the transferor and any guarantor have no reasonable debt-paying ability considering their assets and income at the time of transfer, and

(ii) The lender must certify that the transferor has cooperated in good faith, used due diligence to maintain the collateral against loss, and has otherwise fulfilled all of the regulations of this subpart to the best of the borrower's ability.

(2) The lender will make, in all cases, a complete credit analysis to determine viability of the project (subject to the Agency review and approval) including any requirement for deposit in an escrow account as security to meet the determined equity requirements for the project.

(3) The lender will confirm that the transaction can be properly transferred and the conveyance instruments will be filed, registered, or recorded as appropriate and legally permissible.

(4) The assumption will be made on the lender's form of Assumption Agreement and will contain the Agency case number of the transferor and transferee.

(5) Loan terms cannot be changed by the Assumption Agreement unless previously approved in writing by the Agency with the concurrence of holder and the transferor (including guarantor if it has not been released from personal liability). Any new loan terms cannot exceed those authorized in this subpart. The lender's request will be supported by:

(i) An explanation of the reasons for the proposed change in the loan terms, and

(ii) Certification that the lien position securing the guaranteed loan will be maintained or improved, and proper hazard insurance will be continued in effect.

(6) In the case of a transfer and assumption, it is the lender's responsibility to see that all such transfers and assumptions will be noted on all originals of the Loan Note Guarantee. The lender will provide the Agency a copy of the Transfer and Assumption Agreement.

(7) If a loss should occur upon a complete transfer of assets and assumption for less than the full amount of the debt and the transferor-debtor (including personal guarantor) is released from personal liability (as provided in paragraph (e) of this section), the lender (if holding the guaranteed portion) may file an estimated Report of Loss to recover their pro rata share of the actual loss at that time. Approved protective advances and accrued interest made during the arrangement of a transfer and assumption, if not assumed by the transferee, will be entered on the estimated Report of Loss.

§ 3575.89 Mergers.

(a) *General.* The Agency may approve mergers or consolidations (herein referred to as ''mergers'') when the resulting organization will be eligible for an Agency guaranteed loan and assumes all the liabilities and acquires all the assets of the merged borrower. Mergers may be approved when:

(1) The merger is in the best interest of the Government and the merging borrower;

(2) The resulting borrower can meet all required conditions as contained in specific loan note agreements; and

(3) All property can be legally transferred to the resulting borrower.

(b) *Distinguishing mergers from transfers and assumptions.* Mergers occur when one entity combines with another entity in such a way that the first entity ceases to exist as a separate entity while the other continues. In a consolidation, two or more entities combine to form a new, consolidated entity with the original entity ceasing to exist. Such transactions must be distinguished from transfers and assumptions in which a transferor will not necessarily go out of existence, and the transferee will not always take all the transferor's assets nor assume all the transferor's liabilities.

§ 3575.90 Disposition of acquired property.

(a) *General.* When the lender acquires title to the collateral and the final loss claim is not paid until final disposition, the lender must proceed as quickly as possible to develop a plan to fully protect the collateral, and the lender must dispose of the collateral without delay.

(b) *Re-title collateral.* Any collateral accepted by the lender *must not* be titled in the Agency's name in whole or in part. The Agency's position is that of a guarantor relating to losses, not a lender.

(c) *Collateral preservation.* After acquiring the collateral, the lender must protect the collateral from deterioration (weather, vandalism, etc.). Hazard insurance in an amount necessary to

cover the fair market value of the collateral must be maintained.

(d) *Collateral sale.* (1) The lender will prepare and submit to the Agency a plan on the best method of sale, keeping in mind any prospective purchasers. The Agency must approve the plan in writing. If an existing approved liquidation plan addresses the disposition of acquired property, no further review is required unless modification of the plan is needed.

(2) Anytime there is a case when the conversion of collateral to cash can reasonably be expected to result in a negative net recovery amount, abandonment of the collateral should be considered. The Agency must approve abandonment in writing.

§§ 3575.91–3575.93 [Reserved]

§ 3575.94 Determination and payment of loss.

In all liquidation cases, final settlement will be made with the lender after the collateral is liquidated. The Agency will have the right to recover losses paid under the guarantee from any liable party.

(a) *General.* If the lender takes title to collateral, any loss will be based on the collateral value at the time the lender obtains title.

(b) *Loss calculations.* The Report of Loss form (available in any Agency office) will be used for calculations of all estimated and final loss determinations. Estimated loss payments may only be approved after the lender has submitted a liquidation plan approved by the Agency.

(c) *Estimated loss payments.* When the lender is conducting the liquidation and owns any of the guaranteed portion of the loan, it may request an estimated loss payment by submitting an estimate of loss that will occur in connection with liquidation of the loan. An estimated loss payment may be approved after the Agency has approved the liquidation plan.

(1) The lender will prepare and submit a Report of Loss using the appraised value in lieu of amount received from sale of collateral.

(2) The estimated loss payment shall be calculated as of the date of such payment. The total amount of the loss payment remitted by the Agency will be applied by the lender on the guaranteed portion of the loan debt. Such application does not release the borrower from liability. At the time of final loss settlement, the lender may notify the borrower that the loss payment has been so applied.

(3) After liquidation has been completed, a final Report of Loss will be submitted by the lender to the Agency.

(d) *Final report of loss.* In all cases, a final Report of Loss must be submitted to the Agency. Before Agency approval of any final loss report, the lender must account for all funds obtained, disposition of the collateral, all costs incurred, and any other information necessary for the successful completion of liquidation. Upon receipt of the final accounting and Report of Loss, the Agency may conduct an may audit and will determine the final loss. The lender will make its records available to, and otherwise assist, the Agency in making any audit it requires of the Report of Loss. The documentation accompanying the Report of Loss must support the loss claimed.

(1) The lender must document and show that all of the collateral has been accounted for and properly liquidated and that liquidation proceeds have been properly accounted for and applied correctly on the loan. The Agency must be satisfied that the lender has accomplished this in the manner contained herein and that the lender has maximized the collections in conducting the liquidation.

(2) The lender must show a breakdown on any protective advance amount as to the payee, purpose of the expenditure, date paid, evidence that the amount expended was proper, and that the amount was actually paid.

(3) The lender must show a breakdown of liquidation expenses as to the payee, purpose of the expenditure, date paid, evidence that the amount expended was proper, and that the amount was actually paid.

(4) Accrued interest should be supported by attachments showing how the amount was accrued by the lender. A copy of the promissory note and ledger will be attached. If the interest rate was a variable rate, the lender must include documentation of changes in the selected base rate and when the changes in the loan rate became effective.

(e) *Liquidation income.* Any net rental or other income that has been received by the lender from the collateral will be applied on the guaranteed loan debt.

(f) *Liquidation costs.* Certain reasonable liquidation costs will be allowed during the liquidation process. The liquidation costs must be submitted as a part of the liquidation plan. Such costs will be deducted from gross proceeds received from the disposition of collateral unless the costs have been previously determined by the lender (with Agency concurrence) to be protective advances. If changed circumstances after submission of the liquidation plan require a revision of liquidation costs, the lender will obtain the Agency's written concurrence prior to proceeding with the proposed changes. No in-house expenses of the lender will be allowed.

(g) *Protective advance losses.* In those instances where the lender made authorized protective advances, the lender may claim recovery for the guaranteed portion of any loss of monies advanced as well as interest resulting from such protective advances. These claims shall be included in the final Report of Loss.

(h) *Final loss approval.* After the final Report of Loss has been tentatively approved:

(1) If the actual loss is greater than any estimated loss payment, such loss will be paid by the Agency;

(2) If the actual loss is less than any estimated loss payment, the lender will reimburse the Agency;

(3) If the Agency conducted the liquidation, it will provide an accounting to the lender and will pay the lender in accordance with the Loan Note Guarantee.

(i) *Loss limits.* The amount payable by the Agency to the lender cannot exceed the limits contained in the Loan Note Guarantee. If the Agency conducts the liquidation, loss occasioned by accruing interest will be covered by the guarantee only to the date the Agency accepts this responsibility. When the liquidation is conducted by the lender, loss occasioned by accruing interest will be covered to the extent of the guarantee to the date of final settlement provided the lender proceeds expeditiously with the liquidation plan approved by the Agency.

§ 3575.95 Future recovery.

After a loan has been liquidated and a final loss has been paid by the Agency, any future funds which may be recovered by the lender will be pro-rated between the Agency and the lender in accordance with the guaranteed percentage even if the Loan Note Guarantee has been terminated.

§ 3575.96 Termination of Loan Note Guarantee.

The Loan Note Guarantee under this subpart will terminate automatically:

(a) Upon full payment of the guaranteed loan; or

(b) Upon full payment of any loss obligation or negotiated loss settlement except for future recovery provisions; or

(c) Upon written request from the lender to the Agency, provided that the lender holds all of the guaranteed portion and the original Loan Note Guarantee is returned to the Agency.

§§ 3575.97—3575.99 [Reserved]

§ 3575.100 OMB control number.

The report and recordkeeping requirements contained in this regulation have been approved by the Office of Management and Budget and have been assigned OMB control number 0575–0137.

Subpart B—[Reserved]

Dated: May 17, 1999.

Jill Long Thompson,

Under Secretary, Rural Development.

[FR Doc. 99–13117 Filed 5–25–99; 8:45 am]

BILLING CODE 3410–XV–U

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 416 and 417

[Docket No. 99–025N]

Listeria Monocytogenes Contamination of Ready-to-Eat Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Compliance with the HACCP system regulations and request for comment.

SUMMARY: The Food Safety and Inspection Service (FSIS) is publishing this document to inform manufacturers of ready-to-eat livestock and poultry products of the Agency's views about the application of the hazard analysis and critical control point (HACCP) system regulations to contamination with *Listeria monocytogenes.*

FSIS believes that the findings from testing a range of ready-to-eat products and information from investigations of outbreaks of listeriosis constitute changes that could affect an establishment's hazard analysis or alter the HACCP plan for affected products. Therefore, establishments must reassess their HACCP plans for ready-to-eat livestock and poultry products. If reassessment results in a determination that *Listeria monocytogenes* contamination is a food safety hazard reasonably likely to occur in the establishment's production process, then it is a type of microbiological contamination that must be addressed in a HACCP plan.

In this document, FSIS is setting out several factors that it believes an establishment should consider when performing its reassessment. Also, FSIS is making guidance material available that establishments may find helpful. (See **ADDRESSES**). FSIS invites comments on the factors addressed in this document and on its guidance material.

DATES: Comments may be submitted by July 26, 1999.

ADDRESSES: Submit one original and two copies of written comments to FSIS Docket Clerk, Docket No. 99–025N, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 102, Cotton Annex, 300 12th Street, SW, Washington, DC 20250–3700. All comments submitted in response to this document will be available for public inspection in the Docket Clerk's office between 8:30 a.m. and 4:30 p.m., Monday through Friday.

Guidance material is available from the Inspection Systems Development Division, FSIS, USDA, Room 202, Cotton Annex Building, 300 12th Street SW, Washington, DC 20250–3700, phone (202) 720–3219, Fax (202) 690–0824. The material is also available on the FSIS Homepage: *http://www.fsis.usda.gov/index.htm*

FOR FURTHER INFORMATION CONTACT: Daniel L. Engeljohn, Ph.D., Director, Regulations Development and Analysis Division, Food Safety and Inspection Service, Washington, DC 20250–3700; (202) 720–5627.

SUPPLEMENTARY INFORMATION:

Regulatory Context

The Food Safety and Inspection Service (FSIS) administers the regulatory program under the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 *et seq.*) to protect the health and welfare of consumers by preventing the distribution of livestock and poultry products that are unwholesome, adulterated, or misbranded. To further the goal of reducing the risk of foodborne illness from livestock and poultry products to the maximum extent possible, FSIS issued the Pathogen Reduction-Hazard Analysis and Critical Control Point (HACCP) Systems final rule on July 25, 1996 (61 FR 38806). These regulations require federally inspected establishments to take preventive and corrective measures at each stage of the food production process where food safety hazards occur.

Part 416, the regulations on Sanitation Standard Operating Procedures (SOP's), requires establishments to develop, implement, and maintain written SOP's for sanitation that describe daily procedures that are sufficient to prevent direct contamination or adulteration of products (§ 416.11 and 416.12(a)). Part 417, the regulations on HACCP systems, requires a hazard analysis to determine the food safety hazards reasonably likely to occur in the production process and identify the preventive measures an establishment can apply to control those hazards in the production of particular products (§ 417.2(a)). Whenever a hazard analysis reveals one or more such hazards, the regulations require the establishment to develop and implement a written HACCP plan, for each product, that includes specified controls for each hazard so identified (§ 417.2(b)(1) and (c)).

When FSIS issued the Pathogen Reduction-HACCP Systems final rule, it responded to questions about the link between Sanitation SOP's and HACCP plans by noting the importance of Sanitation SOP's as tools for meeting existing sanitation responsibilities and preventing direct product contamination and adulteration and their appropriateness as near-term procedures—that is, for implementation prior to HACCP implementation and, in a sense, as a prerequisite to HACCP. In response to concerns about redundancy, the Agency noted that a sanitation procedure incorporated into a validated HACCP plan need not be duplicated in the establishment's Sanitation SOP's. FSIS also anticipated that some Sanitation SOP procedures, such as those addressing pre-operational cleaning of facilities, equipment, and utensils were likely to remain in an establishment's Sanitation SOP's. (61 FR 38834.)

The HACCP system regulations require an official establishment to develop and implement a written HACCP plan whenever a hazard analysis reveals one or more food safety hazards that are reasonably likely to occur in the production process ((§ 417.2(a), (b)(1), and (c)). Paragraph (a)(1) of § 417.2 specifies the purpose of a hazard analysis: ''to determine the food safety hazards reasonably likely to occur in the production process and identify the preventive measures the establishment can apply to control those hazards.'' Ten potential hazard areas, including microbiological contamination, are listed to guide establishments in this analysis (§ 417.2(a)(3)).

Section 417.2(a)(1) also provides that a food safety hazard is reasonably likely to occur if a prudent establishment would establish controls because the hazard historically has occurred, or because there is a reasonable possibility that it will occur in the particular type of product being processed, in the absence of those controls.

The likelihood that a potential food safety hazard will occur in the production process for a particular

product at a given location, and the identification and adequacy of preventive measures to control a likely hazard, must be determined by each establishment. Obviously, conditions may well change over time. For this reason, the HACCP system regulations require every establishment to reassess HACCP plan adequacy at least annually and whenever any changes occur that could affect the underlying hazard analysis or alter the HACCP plan (§ 417.4(a)(3)). When reassessment reveals that a plan no longer meets the requirements for the contents of a HACCP plan, the establishment must modify the plan immediately (§ 417.4(a)(3)).

Listeria Monocytogenes

Listeria monocytogenes is a type of pathogenic bacteria often found in the intestines of healthy animals (including humans) and in the environments in which food producing animals are raised and processed (*e.g.*, in soil, water, and vegetation and on the surfaces of equipment, floors, and walls). Therefore, food may be contaminated with this microorganism and, after cooking or other treatment to destroy the pathogen, may be recontaminated.

Listeria monocytogenes can cause listeriosis, a serious and sometimes fatal illness, for which pregnant women, newborns, the elderly, and people with weakened immune systems are at risk. The most common manifestation of listeriosis is meningitis. It also can cause miscarriages and stillbirths. Advances in molecular subtyping methods have improved scientists' ability to associate Listeria monocytogenes with particular products and to detect outbreaks of listeriosis.

Since the late 1980's, FSIS and the Food and Drug Administration (FDA) have worked with food manufacturers to improve procedures for ensuring that ready-to-eat foods (*i.e.*, products that may be consumed without any further cooking or other preparation) are free of *Listeria monocytogenes*. In addition, for the past decade, FSIS has conducted a microbiological testing program in which the Agency samples ready-to-eat livestock and poultry products, including cooked and fermented sausages, cooked corned beef, sliced ham and luncheon meats, beef jerky, cooked uncured poultry, and salads and spreads, in federally inspected establishments. (For the Agency's current testing program instructions, see FSIS Directive 10,240.2, Microbial Sampling of Ready-to-Eat Products Produced by Establishments Operating Under a HACCP System.) FSIS treats ready-to-eat products in which *Listeria monocytogenes* is found as adulterated under the FMIA or the PPIA (21 U.S.C. 453(g) or 601(m)).

Between 1989 and 1993, the rate of illness from *Listeria monocytogenes* declined. Over the next several years, there did not appear to be any further decline, however, and since last fall, there has been an increase in the number of cases caused by a specific subtype—a previously rare ''E'' pattern—of *Listeria monocytogenes*. The Centers for Disease Control, U.S. Public Health Service, Department of Health and Human Services (DHHS), have reported 101 illnesses, 15 adult deaths and 6 stillbirths or miscarriages associated with this ''E'' pattern. Using methodological advances that provide more specific information about pathogens isolated from foods and humans, public health agencies have obtained information associating the ''E'' pattern subtype of *Listeria monocytogenes* with livestock and poultry products.

FSIS currently is evaluating a range of measures, both short- and long-term, to improve public health protection against this pathogen. In aid of this evaluation, FSIS held a public meeting on February 10, 1999, at which research, regulation, and education activities along with industry and government procedures, were discussed.

Controlling Listeria Monocytogenes Contamination

FSIS is publishing this document to advise federally inspected establishments of the Agency's current position on one aspect of the public health strategy to deal with *Listeria monocytogenes* contamination and to provide an opportunity to comment on that position as FSIS continues to develop a comprehensive strategy. FSIS is concerned because some establishments have not reassessed their HACCP plans after recent outbreaks of listeriosis caused by contaminated ready-to-eat livestock and poultry products, and after some establishments have produced ready-to-eat products adulterated with *Listeria monocytogenes*. If *Listeria monocytogenes* contamination is a food safety hazard reasonably likely to occur in an establishment's production process, then it must be addressed in a HACCP plan. It would not be sufficient to claim that the hazard is adequately dealt with in the establishment's Sanitation SOP. HACCP plan reassessment is necessary to determine whether the plan appropriately addresses this hazard.

FSIS views investigations of recent outbreaks of listeriosis and findings of *Listeria monocytogenes* contamination, along with other information now available on the prevalence and persistence of this foodborne pathogen, as sufficient evidence that some establishments' present approach to the food safety hazard presented by ready-to-eat livestock food and poultry products adulterated with *Listeria monocytogenes* does not comply with part 417 requirements. Therefore, FSIS believes that § 417.4(a)(3) requires that establishments reassess the HACCP plans that cover ready-to-eat livestock and poultry products.

Put another way, the Agency does not see how—given the current record of contamination incidents and information now available on the prevalence and persistence of the microorganism, its ability to survive under adverse conditions, and the apparent susceptibility of some products to contamination—an establishment that produces a ready-to-eat product (other than one that is thermally processed-commercially sterile, in accordance with part 318, subpart G, or part 381, subpart X, of the regulations) could have confidence that, in operation, the HACCP plan for the product meets part 417 requirements.

FSIS' conclusion addresses only the need for HACCP plan reassessment. FSIS cannot predict the likelihood that an establishment producing ready-to-eat products would be required under the regulations to incorporate, or alter, controls to prevent *Listeria monocytogenes* contamination in one or more HACCP plans as a result of plan reassessment. FSIS does believe, however, that given current knowledge, *Listeria monocytogenes* contamination should be considered to be reasonably likely to occur in the production of ready-to-eat livestock and poultry products, especially if an establishment has produced products adulterated with *Listeria monocytogenes*, or if the establishment is producing one or more ready-to-eat products that are susceptible to *Listeria monocytogenes* contamination in an environment that is not known to be free of this pathogen.

FSIS urges establishments that produce ready-to-eat livestock and poultry products to perform the reassessment of their HACCP plans within 30 days of the publication of this document. FSIS will instruct its inspection personnel to verify that reassessments were conducted. If an establishment does not reassess its HACCP plan in accord with this document, FSIS will evaluate the establishment's compliance with Part 417.

Set out below are factors that FSIS believes are relevant in determining whether *Listeria monocytogenes* contamination is a food safety hazard reasonably likely to occur in the production process and in identifying preventive measures that establishments can apply to control the hazard. Reassessments of HACCP plans should take these factors into account. FSIS is providing technical information and other Agency guidance material. (See ADDRESSES to obtain copies.) The Agency invites comments on this guidance material and the factors set out below.

(1) *Pathogen Levels in Starting Materials* FSIS believes that it is crucial that each establishment know the characteristics of its starting materials and, in particular, keep itself informed about evidence of *Listeria monocytogenes* contamination of the raw materials or source of raw materials that the establishments use.

(2) *Validation of Lethality Treatment* FSIS believes industry members must comply rigorously with the HACCP plan validation requirements of § 417.4(a)(1), especially in ensuring that the establishment can successfully apply a scientifically appropriate lethality treatment under its commercial operating conditions (see 61 FR 38826–38827). Until the establishment demonstrates that it achieves the anticipated lethality effect under actual in-plant conditions, effectiveness is theoretical, and the plan is not validated.

(3) *Exposure to Contamination After Lethality Treatment* The available evidence on the presence of *Listeria monocytogenes* in food processing environments appears to indicate an increased potential for the contamination of product after a food is processed to destroy pathogenic microorganisms. Therefore, an establishment's reassessment of its HACCP plans needs to address such potential contamination. Establishments should account for finished product characteristics such as water activity, pH, and the presence or absence of one or more barriers that inhibit pathogen growth. The HACCP plan must incorporate any hazards identified by the reassessment.

(4) *Evidence of Product Contamination* FSIS believes that any finding of *Listeria monocytogenes* in an establishment's ready-to-eat product, whether in government or industry test results, is substantial, and perhaps conclusive, evidence that *Listeria monocytogenes* contamination is a food safety hazard that is reasonably likely to occur in its production process for that product. Therefore, in the event of such a finding, FSIS' position is as follows. If the establishment's HACCP plan does not already provide for the control of *Listeria monocytogenes*, and absent substantial, scientifically supportable reasons, that HACCP plan must be modified to address the *Listeria monocytogenes* hazard and incorporate appropriate controls. If the establishment's HACCP plan does address and control for *Listeria monocytogenes*, the establishment must take the appropriate corrective actions in accord with the requirements of 9 CFR 417.3. FSIS inspection personnel will verify that the establishment has taken the necessary corrective actions.

Done at Washington, DC, on May 19, 1999.

Thomas J. Billy,

Administrator.

[FR Doc. 99–13223 Filed 5–25–99; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–SW–47–AD; Amendment 39–11182; AD 99–11–11]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model SA–365N, N1, N2, N3, and SA–366G1 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to Eurocopter France Model SA–365N, N1 and SA–366G1 helicopters, that currently requires repetitive inspections of the main gearbox (MGB) magnetic chip plug and oil filter if certain part number/modification level MGB's are installed. This new action expands the helicopter model and MGB applicability to include the SA–365N2 and N3 helicopters and all variants of the MGB. It also requires installing a MGB planetary gear shaft (gear shaft) vibration level monitoring unit (VLMU); inserting procedures into the Rotorcraft Flight Manual (RFM) for a preflight vibration check using the VLMU and inserting a related emergency procedure and limitation for an inoperative VLMU into the RFM. This action is prompted by two occurrences of gear shaft cracks. The actions specified by this AD are intended to detect cracks in the MGB planetary gear shaft, which could lead to failure of the MGB and subsequent loss of control of the helicopter.

DATES: Effective June 10, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 10, 1999.

Comments for inclusion in the Rules Docket must be received on or before July 26, 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–47–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

The service information referenced in this AD may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Shep Blackman, Aerospace Engineer, Rotorcraft Standards Staff, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5296, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: The FAA issued Priority Letter AD 97–15–15 on July 18, 1997, prompted by two occurrences of MGB planetary gear shaft cracks, AD 97–15–15 was published in the **Federal Register** on February 6, 1998 (63 FR 6069). It requires that the magnetic chip plug on any MGB that was not modified in accordance with MOD 077244 be inspected after every flight and the MGB oil filter be inspected after the last flight of each day or at intervals not to exceed 12 hours time-in-service (TIS). The presence of any ferrous chips or any reports of abnormal vibrations by the flight crew requires a MGB ground vibration evaluation before further flight. Eurocopter France has recently advised the FAA that the potential for planetary gear shaft cracks exists for all MGB variants, regardless of modification level, currently authorized for installation on FAA-certified Model SA–365/366 helicopters. The temporary installation of the VLMU enables the flight crew to more easily and accurately assess the vibration level of the MGB prior to each flight. The manufacturer is pursuing a redesign of the affected MGB that will probably result in a mandatory

modification of the MGB and constitute a terminating action for the requirements of this AD. It is anticipated that after the modification is accomplished, the VLMU will no longer be required.

The Direction Generale de L'Aviation Civile (DGAC), which is the airworthiness authority for France, has notified the FAA that an unsafe condition may exist on Eurocopter France Model SA–365N, N1, N2, and N3, and SA–366G1 helicopters. The DGAC advises that, based on two reports of cracks detected on the gear shaft, an AD is necessary to mandate the installation and the utilization of an MGB vibration level unit that detects vibrations at the shaft rotation frequency and indicates the potential for a crack in the gear shaft.

Eurocopter France has issued Eurocopter AS 365 Service Bulletin No. 31.00.03, applicable to Model SA–365N, N1, N2, and N3, helicopters; and Eurocopter SA 366 Service Bulletin No. 31.01, applicable to Model SA–366G1 helicopters, both dated June 23, 1998. These service bulletins provide for the installation of a VLMU that enables a ground check for vibrations amplitude at the shaft rotational frequency and provides an indication to the pilot when the amplitude of vibration reaches a level that could indicate the existence of a crack in the gear shaft. The service bulletins also provide for checks of the MGB chip plug and oil filter, and measurements of on-ground vibration levels if the VLMU becomes inoperative. The DGAC classified these service bulletins as mandatory and issued AD 98–324–045(A), applicable to Model 365N helicopters, and AD 98–323–023(A), applicable to Model 366 helicopters, both dated August 12, 1998, in order to assure the continued airworthiness of these helicopters in France.

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

Since an unsafe condition has been identified that is likely to exist or develop on other Eurocopter France SA–365N, N1, N2, and N3, and SA–366G1 helicopters of the same type design registered in the United States, this AD is being issued to detect cracks in the MGB planetary gear shaft, which could lead to failure of the MGB and subsequent loss of control of the helicopter. This AD requires installing a MGB VLMU to enable a preflight MGB vibration check, revising the RFM normal, emergency and limitations sections, and if the VLMU becomes inoperative, inspecting the MGB magnetic plug after every flight and the oil filter each day in which flights are conducted (not to exceed 12 hours time-in-service between inspections). The actions are required to be accomplished in accordance with the applicable service bulletins described previously. If metallic particles are found on the magnetic plug or oil filter, drive system ground vibration measurements must be conducted. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the structural integrity of the helicopter. Therefore, the actions are required within 25 hours time-in-service and this AD must be issued immediately.

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

The FAA estimates that 26 helicopters will be affected by this AD, that it will take approximately 10 work hours to install the VLMU, and that the average labor rate is $60 per work hour. The manufacturer has stated that required parts are available at no cost. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $15,600.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 98–SW–47–AD.'' The postcard will be date stamped and returned to the commenter.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the

Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

AD 99–11–11 Eurocopter France: Amendment 39–11182. Docket No. 98–SW–47–AD. Supersedes AD 97–15–15, Amendment 39–10313, Docket No. 97–SW–23–AD.

Applicability: Model SA–365N, N1, N2, and N3 helicopters, serial numbers up to and including 6538, and SA–366G1 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 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 (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect cracks in the main gearbox (MGB) planetary gear shaft (shaft), which could lead to failure of the MGB and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 25 hours time-in-service, install a MGB shaft vibration level monitoring unit (VLMU), in accordance with paragraph B. of the Accomplishment Instructions of either Eurocopter AS 365 Service Bulletin No. 31.00.03, applicable to Model SA–365N, N1, N2, and N3 helicopters; or Eurocopter SA 366 Service Bulletin No. 31.01, applicable to Model SA–366G1 helicopters, both dated June 23, 1998 (SB's).

(b) Before further flight, accomplish the following:

(1) Insert paragraphs 2D1), 2D2), and 2D3) of the SB's into the applicable Rotorcraft Flight Manual post-start normal procedures section.

(2) Insert the following statement in the Emergency Procedures section of the applicable Rotorcraft Flight Manual: ''If vertical vibrations at approximately 4/rev frequency are detected, reduce power, land as soon as practicable, and perform a VLMU vibration level check.''

(3) Insert the following statement into the Limitations section of the applicable Rotorcraft Flight Manual: ''If the VLMU becomes inoperative, it must be returned to service within 30 calendar days or the helicopter must be grounded until such repairs are made.''

(c) If the VLMU becomes inoperative, inspect the MGB magnetic plug; it must be inspected before every flight and inspect the MGB oil filter each day in which flights are conducted or at intervals not to exceed 12 hours time-in-service, whichever occurs first. When metallic particles are found on either the magnetic plug or the oil filter element, conduct drive system ground vibration measurements before further flight.

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

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

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

(f) The actions shall be done in accordance with the Eurocopter AS 365 Service Bulletin No. 31.00.03, or Eurocopter SA 366 Service Bulletin No. 31.01, both dated June 23, 1998, as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on June 10, 1999.

Note 3: The subject of this AD is addressed in Direction Generale de L'Aviation Civile (France) AD 98–324–045(A), applicable to Model SA–365N helicopters, and AD 98–323–023(A), applicable to Model SA–366 helicopters, both dated August 12, 1998.

Issued in Fort Worth, Texas, on May 18, 1999.

Mark R. Schilling,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 99–13320 Filed 5–25–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–SW–61–AD; Amendment 39–11181; AD 99–11–10]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model AS 332L2 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Eurocopter France Model AS 332L2 helicopters with a certain power-loss printed circuit board (PCB) installed. This action requires replacing that power-loss PCB with an airworthy power-loss PCB. This amendment is prompted by malfunctions discovered during environmental testing of the power-loss PCB conducted by the manufacturer. The actions specified in this AD are intended to prevent incorrect engine status indications, random activation of the maximum rotor revolutions-per-minute (RPM) alarm, and failure to reset the One-Engine Inoperative (OEI) logic after an actual loss of power from one engine.

DATES: Effective June 10, 1999.

Comments for inclusion in the Rules Docket must be received on or before July 26, 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–61–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Shep Blackman, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5296, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: The Direction Generale De L'Aviation Civile (DGAC), which is the airworthiness authority for France, has notified the FAA that an unsafe condition may exist on Eurocopter France Model AS 332L2 helicopters. The DGAC advises that design anomalies of the power-loss PCB can lead to non-resetting of the OEI logic after failure of one engine.

Eurocopter France has issued Eurocopter Service Bulletin 31.00.11, dated September 8, 1998, which specifies replacing the power-loss PCB, part number (P/N) SE01958 (Eurocopter

France P/N 704A47720091) Amendment C or D, with an airworthy power-loss PCB, P/N SE01973 (Eurocopter France P/N 704A47720109). The manufacturer advises that design anomalies of the power-loss PCB can lead to incorrect engine status indications, random activation of the maximum rotor RPM audio alarm, and non-resetting of the OEI logic after failure of one engine. The DGAC classified this service bulletin as mandatory and issued AD 98–290–011(A), dated August 12, 1998, in order to assure the continued airworthiness of these helicopters in France.

This helicopter model is manufactured in France 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, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other Eurocopter France Model AS 332L2 helicopters of the same type design registered in the United States, this AD is being issued to prevent incorrect engine status indications, random activation of the maximum rotor RPM audio alarm, and failure to reset the OEI logic after an actual loss of power from one engine. This AD requires replacement of the power-loss PCB, P/N SE01958 (704A47720091) Amendment C or D, with an airworthy power-loss PCB, P/N SE01973 (704A47720109).

None of the Model AS 332L2 helicopters affected by this action are on the U.S. Register. All helicopters included in the applicability of this rule are currently operated by non-U.S. operators under foreign registry, so they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure the unsafe condition is addressed in the event that any of these subject helicopters are imported and placed on the U.S. Register in the future.

Cost Impact

If an affected helicopter is imported and placed on the U.S. Register in the future, it would require approximately 3 work hours to accomplish the replacement, at an average labor rate of $60 per work hour. The manufacturer has stated that there would be no charge for parts. Based on these figures, the cost impact of this AD would be $180 per helicopter.

Since this AD action does not affect any helicopter that is currently on the U.S. Register, and it has no adverse economic impact and imposes no additional burden on any person, notice and public procedures are unnecessary, and the amendment may be made effective in less than 30 days after publication in the **Federal Register**.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 98–SW–61–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

The FAA's Determination

The FAA has determined that notice and prior public comment are unnecessary in promulgating this regulation and therefore, it can be issued immediately to correct an unsafe condition in aircraft since none of these model helicopters are registered in the United States, and that it is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

AD 99–11–10 Eurocopter France: Amendment 39–11181. Docket No. 98–SW–61–AD.

Applicability: Model AS 332L2 helicopters, with power-loss printed circuit board (PCB), part number (P/N) SE01958 (Eurocopter France P/N 704A47720091) Amendment C or D, installed, 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 as indicated, unless accomplished previously.

To prevent incorrect engine status indications, random activation of the maximum rotor revolutions-per-minute (RPM) audio alarm, and failure to reset the One Engine Inoperative (OEI) logic after an actual loss of power from one engine, accomplish the following:

(a) Before further flight, remove the power-loss PCB, P/N SE01958 (Eurocopter France P/N 704A47720091) Amendment C or D, and replace it with an airworthy power-loss PCB, P/N SE01973 (Eurocopter France P/N 704A47720109).

(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, FAA, Rotorcraft Standards Staff, Rotorcraft Directorate. Operators shall submit their requests through a FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Standards Staff.

Note 2: You may obtain information concerning the existence of approved alternative methods of compliance with this AD from the Rotorcraft Standards Staff.

(c) Special flight permits may be issued in accordance with §§ 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.

(d) This amendment becomes effective on June 10, 1999.

Note 3: The subject of this AD is addressed in Direction Generale De l'Aviation Civile (France) AD 98–290–011(A), dated August 12, 1998.

Issued in Fort Worth, Texas, on May 18, 1999.

Mark R. Schilling,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 99–13321 Filed 5–25–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–ANE–54 AD; Amendment 39–11180; AD 99–11–09]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney JT9D Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This document supersedes an existing airworthiness directive (AD), applicable to Pratt & Whitney (PW) JT9D series turbofan engines, that currently requires initial and repetitive in-shop or on-wing inspections of the diffuser case rear rail for cracking, and removal, if necessary, of the diffuser case. This AD will reduce the allowable crack length, reduce the inspection intervals, and introduce an improved inspection method. This AD is prompted by continued reports of diffuser case ruptures, and improved understanding of crack propagation rates. The actions specified by this AD are intended to prevent diffuser case rupture, uncontained engine failure, and damage to the aircraft.

DATES: Effective July 26, 1999. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 26, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from. Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565–6600, fax (860) 565–4503. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA 01803–5299; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Peter White, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7128, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding airworthiness directive (AD) 94–26–06, Amendment 39–9102 (59 FR 67176, December 29, 1996, applicable to certain Pratt & Whitney (PW) (PW) JT9D–59A, –70A, –7Q, and –7Q3 series turbofan engines, was published in the **Federal Register** on January 11, 1999 (64 FR 1552). That action proposed to require initial and repetitive in-shop or on-wing inspections of the diffuser case rear rail for cracking, and removal, if necessary, of the diffuser case.

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

Two commenters state that they are not affected by this AD.

A third commenter states that minimal impact is expected from the AD as premature removal of the affected parts is planned.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 566 engines of the affected design in the worldwide fleet. The FAA estimates that 157 engines installed on aircraft of U.S. registry will be affected by this AD, that it would take approximately 29 work hours per engine to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $273,180.

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

99–11–09 Pratt & Whitney: Amendment 39–11180. Docket No. 94–ANE–54. Supersedes AD 94–26–06, Amendment 39-9102.

Applicability: Pratt & Whitney (PW) JT9D–59A, –70A, –7Q, and –7Q3 series turbofan engines, installed on but not limited to Airbus A300 series, Boeing 747 series, and McDonnell Douglas DC–10 series aircraft.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent diffuser case rupture, an uncontained engine failure, and damage to the aircraft, accomplish the following:

(a) Perform initial and repetitive fluorescent penetrant inspections (FPI) or eddy current inspections (ECI) of diffuser case rear rails for cracks in accordance with the Accomplishment Instructions of PW JT9D (SB) No. 5749, Revision 8, dated October 30, 1998, as follows:

(1) For engines on-wing that have not had the diffuser case rear rail FPI or ECI inspected using the procedures referenced in PW JT9D SB No. 5749, Revision 4, dated May 10, 1993; Revision 5, dated September 29, 1995; Revision 6, dated May 8, 1998; Revision 7, dated August 19, 1998; or Revision 8, dated October 30, 1998; Section 2, Part 1 A (1)–(3), accomplish the following:

(i) Perform an initial on-wing inspection within 25 cycles of the effective date of this AD in accordance with Section 2, Part 2 of PW JT9D SB No. 5749, Revision 8, dated October 30, 1998.

(ii) Thereafter, except as provided in paragraph (a)(4) of this AD, perform on-wing inspections in accordance with the time requirements listed in Section 2, Part 2 of PW JT9D SB No. 5749, Revision 8, dated October 30, 1998.

(2) For engines on-wing that have had the diffuser case rear rail FPI or ECI inspected using the procedures referenced in PW JT9D SB No. 5749, Revision 4, dated May 10, 1993; Revision 5, dated September 29, 1995; Revision 6, dated May 8, 1998; Revision 7, dated August 19, 1998; or Revision 8, dated October 30, 1998; Section 2, Part 1 A (1)–(3), perform initial and repetitive on-wing inspections in accordance with PW JT9D SB 5749, Revision 8, dated October 30, 1998, within the time requirements listed in Section 2, Part 2 of that SB, except as provided in paragraph (a) (4) of this AD.

(3) Remove from service diffuser cases that do not meet the return to service criteria stated in PW JT9D SB No. 5749, Revision 8, dated October 30, 1998, Section 2, Part 2 D, and replace with serviceable parts.

(4) For engines that are overdue for an inspection on the effective date of this AD, accomplish the required inspection within 25 cycles in service of the effective date of this AD.

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

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

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

(d) The actions required by this AD shall be accomplished in accordance with the following Pratt & Whitney SB:

Document No.	Pages	Revision	Date
5749	1, 2	8	October 30, 1998.
	3	6	May 8, 1998.
	4	7	August 19, 1998.
	5–7	6	May 8, 1998.
	8, 9	8	October 30, 1998.
	10, 11	6	May 8, 1998.
	12	7	August 19, 1998.
	13–18	6	May 8, 1998.
Total pages: 18.			

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Pratt & Whitney, Publication Department, Supervisor Technical Publications Distribution, M/S 132–30, 400 Main St., East Hartford, CT 06108; telephone (860) 565–7700, fax (860) 565–4503. Copies may be inspected at the FAA, New England Region, Office of Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on July 26, 1999.

Issued in Burlington, Massachusetts, on May 18, 1999.

David A. Downey,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 99–13322 Filed 5–25–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 184

[Docket No. 79G–0372]

Direct Food Substances Affirmed as Generally Recognized as Safe: Cellulase Enzyme Preparation Derived From Trichoderma Longibrachiatum for Use In Processing Food

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations to affirm that cellulase enzyme preparation derived from *Trichoderma longibrachiatum* (formerly called *Trichoderma reesei*) as generally recognized as safe (GRAS) is for use in processing food. This action is in response to a petition filed by the AAC Consulting Group, Inc., on behalf of Novo Laboratories, Inc.

DATES: This regulation is effective May 26, 1999. The Director of the Office of the Federal Register approves the incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 of a certain publication in § 184.1250 (21 CFR 184.1250), effective May 26, 1999.

FOR FURTHER INFORMATION CONTACT: Nega Beru, Center for Food Safety and Applied Nutrition (HFS–206), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3097.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the procedures described in § 170.35 (21 CFR 170.35), AAC Consulting Group, Inc. (formerly Arthur A. Checci, Inc.), 7445 Wisconsin Ave., suite 850, Bethesda MD 20814, on behalf of Novo Nordisk BioChem North America, Inc. (formerly Novo Laboratories, Inc.), State Rd. 1003, P.O. Box 576, Franklinton, NC 27525–0576, submitted a petition (GRASP 9G0260) requesting affirmation that cellulase enzyme preparation derived from a nonpathogenic strain of *T. reesei* (later renamed *T. longibrachiatum*) used for processing food is GRAS. Cellulase, the enzyme, is to be distinguished from cellulase enzyme preparation, which contains cellulase as the principal active component, but it also contains other components derived from the production organism and fermentation media. This document will refer to the former as ''cellulase'' and the latter as ''cellulase enzyme preparation.''

In the **Federal Register** of November 27, 1979 (44 FR 67731), FDA published a notice of filing of GRASP 9G0260, and gave interested parties an opportunity to submit comments. FDA received one comment in response to the notice. The comment urged the agency to affirm the GRAS status of the cellulase enzyme preparation without restricting its use in food other than to require that the use of the enzyme be consistent with current good manufacturing practice.

II. Standards for GRAS Affirmation

Under § 170.30 (21 CFR 170.30), general recognition of safety may be based only on the views of experts qualified by scientific training and experience to evaluate the safety of substances added to food. The basis of such views may be either : (1) Scientific procedures, or (2) in the case of a substance used in food prior to January 1, 1958, experience based on common use in food (§ 170.30(a)). General recognition of safety based upon scientific procedures requires the same quantity and quality of scientific evidence as is required to obtain approval of a food additive regulation and ordinarily is based upon published studies, which may be corroborated by unpublished studies and other data and information (§ 170.30(b)). General recognition of safety through experience based on common use in food prior to January 1, 1958, may be determined without the quantity or quality of scientific evidence required for approval of a food additive regulation and ordinarily is based upon generally available data and information.

In its petition, Novo Nordisk BioChem North America, Inc., relied on scientific procedures, primarily published studies, scientific papers and books, to demonstrate the safety and identity of the cellulase enzyme and the production strain from which it is derived. The petitioner provided published studies documenting that cellulase enzyme preparation derived from nontoxicogenic, nonpathogenic *T. longibrachiatum* is GRAS.

In evaluating this petition, the agency reviewed information concerning: (1) The production organism, (2) the identity and function of the cellulase enzyme, (3) the production and purification of the cellulase enzyme preparation, (4) the use of the cellulase enzyme preparation in the production of food products, and (5) the safety of the enzyme preparation.

III. Safety Evaluation

A. Introduction

Commercial enzyme preparations that are used in food processing typically are not chemically pure, but they contain, in addition to the enzyme component, other components that derive from the production organism and fermentation media, residual amounts of processing aids, and substances used as stabilizers, preservatives or diluents. Issues relevant to a safety evaluation of the enzyme preparation therefore include the safety of the enzyme component, the safety of the enzyme source, and the safety of processing aids and other substances added during the manufacturing process. A safety evaluation of an enzyme preparation also includes consideration of dietary exposure to that preparation.

B. Production Organism

In a submission dated December 7, 1988, the petitioner informed the agency that the International Commission on Taxonomy of Fungi (ICTF) had decided to rename the source organism, a fungus known for its high cellulase productivity, from *T. reesei*, to *T. longibrachiatum* (Ref. 1). The petitioner presented published studies to assess potential pathogenicity of *T. longibrachiatum* in mice, rabbits, and guinea pigs (Ref. 2). No adverse reactions were reported in these studies. The petitioner also included in its petition the results of a search of several scientific data bases including Biological Abstracts, 1977–83; Chemical Abstracts, 1977–83; Scisearch, 1978–83; Medline, 1980–83; and Food Science and Technology Abstracts, 1969–83. The petitioner states that these searches demonstrate that *T. longibrachiatum* is well known and available to the scientific community, and the data bases contain studies in which the microorganism, or enzymes derived from it, were utilized without any evidence of pathogenicity or toxicogenicity being associated with their use. The searches did not identify a single report that *T. longibrachiatum* is the etiological agent of a disease in man or animals. The agency concludes, based upon the published information presented in the petition (Refs. 2 through 6) that the production organism *T. longibrachiatum* has been adequately identified and determined to be nontoxicogenic and nonpathogenic (Ref. 7).

C. Identity and Function of the Cellulase Enzyme

Cellulase is the accepted name for the enzyme that catalyzes the endohydrolysis of 1,4-beta-glucosidic linkages in cellulose (Ref. 8). The enzyme will also hydrolyze 1,4-linkages in beta-glucans. The enzymatically formed reaction products are mainly glucose and cellobiose, a disaccharide composed of two glucose molecules. According to the recommendations of the International Union of Pure and Applied Chemistry and the International Union of Biochemistry (1972), cellulase has the following designation: Cellulase, E.C. 3.2.1.4 (Ref. 9). FDA concludes that generally available and accepted data and information establish that the cellulase that is the subject of this document is capable of achieving its intended technical effect.

D. Production of Cellulase Enzyme Preparation

The production process for cellulase enzyme preparation from *T. longibrachiatum* is described in GRASP 9G0260 and can be summarized as follows. A pure culture of *T. longibrachiatum* is aseptically grown in a typical culture medium such as one containing potato starch, soybean meal, corn steep liquor, or dextrose. Mineral salts, such as phosphates and sulfates, are included in the medium which also contains an antifoaming agent and a surfactant. The fermentation is conducted at 26 to 32 °C with aeration and maximal agitation. Cell growth and the possible presence of foreign microorganisms are monitored by taking samples before inoculation of the fermenter, every 24 hours during cultivation, and before transfer/harvesting.

After 100 to 170 hours, the culture broth is subjected to flocculation and filtration. The enzyme, which is secreted into the extracellular medium, is separated from the mycelium by action of the flocculating agent. This material is then removed by filtration using a filter aid. The enzyme, which remains in solution, is concentrated by ultrafiltration or vacuum evaporation at 30 to 40 °C. The enzyme suspension is then dried to a powder by spray drying or concentrated in liquid form by vacuum evaporation. The packaged finished product, powder or liquid, is shipped or stored at 4 °C.

The agency finds that the fermentation generating organism is maintained in a manner to avoid contamination and genetic changes, that the fermentation is a pure culture fermentation initially and is monitored for purity periodically during the culture period, and that the filtration step in the purification process would remove any viable production organisms from the final product (Ref. 7). The agency further finds that, because the potential impurities in the cellulase enzyme preparation that may originate from the source or manufacturing process do not raise any basis for concern about the safe use of the preparation, the general requirements for enzyme preparations as described in the ''Food Chemicals Codex,'' 4th ed. (1996) (Ref. 10), which are being incorporated by reference in new § 184.1250 in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, are adequate as minimum criteria for food-grade cellulase enzyme preparation.

E. Use in Food

The function of cellulase enzyme preparation in food production includes uses such as the breakdown of the cellulose in citrus products, removal of fiber from edible oil press cakes, increase in starch recovery from potatoes, extraction of proteins from leaves and grasses, tenderizing fruits and vegetables prior to cooking, extraction of essential oils and flavoring material from plant materials, the preparation of animal feeds, and other uses that are discussed in publications such as the *Handbook of Food Additives* (Refs. 11 and 12) .

The petitioner also presented additional published information that the cellulase enzyme preparation performed its intended technical effect in the production of various food materials. Cellulase enzyme preparation has been shown to be effective in the degradation of vegetable tissues and in the extraction of green tea components, vegetable proteins and starches. Cellulase enzyme preparation is also capable of modifying food materials such as vegetables, rice, and soybeans to markedly influence the digestibility, cooking quality, shape, and the yield of nutrients (Ref. 13).

The agency has considered the estimated dietary exposure to cellulase enzyme preparation from its proposed use (Refs. 14 and 15). Enzymes, including the petitioned cellulase, are used in small quantities in food to accomplish their intended effects. In addition, many food processes that use cellulase also include removal of insoluble solids, a processing step that should remove most of the added enzyme preparation. Nonetheless, in calculating the estimated dietary exposure to cellulase enzyme preparation, the agency made the conservative assumptions that no cellulase enzyme preparation is removed from the food by processing, and all foods that may be treated with cellulase enzyme preparation will be so treated. The agency concludes that the dietary exposure to cellulase enzyme preparation does not present a basis for concern about the safety of its use (Refs. 16 and 17).

F. Safety Studies

The petitioner has provided published studies with the cellulase enzyme preparation, corroborated with unpublished studies, to demonstrate that the enzyme preparation is safe for use in food. The petitioner provided published oral acute toxicity studies with mice, rats, and dogs and oral subchronic studies with rats and dogs (Ref. 2). No significant adverse effects were noted in these studies.

A published toxicity study with *in utero* exposure, and a teratogenicity study, both conducted with rats, reported no adverse effects at levels up to 5 percent in the diet (Ref. 2). The petitioner also provided published mutagenicity studies involving the Ames test, chromosomal aberration tests, and dominant lethal tests (Ref. 2). There was no evidence of mutagenicity of the cellulase enzyme preparation in any of these tests. Other published studies with the cellulase enzyme preparation provided by the petitioner include an inhalation study in rats; skin and eye irritation tests in rabbits; a skin irritation test in humans; and a skin sensitivity test in guinea pigs and humans. Finally, because certain species of Trichoderma are known to produce substances that inhibit the growth of microorganisms, the petitioner tested the culture broth of *T. longibrachiatum* for antibiotics or toxins; the tests were negative (Ref. 2).

The agency has reviewed the published safety studies in the petition along with other available information. The agency concludes that the published safety data support the use of cellulase enzyme preparation from *T. longibrachiatum* for the enzymatic breakdown of cellulose in processing food (Refs. 16 and 17).

IV. Conclusions

The agency has evaluated all available information and finds, based upon the published information about the identity and function of cellulase, that the enzyme component of cellulase enzyme preparation will achieve its intended technical effect and raises no toxicity concerns. The agency further finds, based upon generally available and accepted information, that when the cellulase enzyme preparation is manufactured in accordance with § 184.1250, the source, *T. longibrachiatum*, and the manufacturing process will not introduce impurities into the preparation that may render its use unsafe. Finally the agency finds that dietary exposure to the cellulase enzyme preparation from the petitioned use does not present a basis for concern about the safe use of the cellulase enzyme preparation. Therefore, the agency concludes, based on the evaluation of published data and information, and based upon scientific procedures (§ 170.30(b)), that use of the cellulase enzyme preparation derived from *T. longibrachiatum* for the enzymatic breakdown of cellulose in processing food is GRAS. Therefore, the agency is affirming that the use of

cellulase enzyme preparation from *T. longibrachiatum* described in the regulation set out below is GRAS (21 CFR 184.1(b)(1)) with no limitations other that current good manufacturing practice.

V. Environmental Effects

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's findings of no significant impact and the evidence supporting these findings, contained in an environmental assessment, may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

VI. Analysis of Impacts

A. Analysis for Executive Order 12866

FDA has examined the impacts of this final rule under Executive Order 12866. Executive Order 12866 directs agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). According to Executive Order 12866, a regulatory action is significant if it meets any one of a number of specified conditions, including having an annual effect on the economy of $100 million, adversely affecting in a material way a sector of the economy, competition, or jobs, or if it raises novel legal or policy issues. FDA finds that this final rule is not a significant regulatory action as defined by Executive Order 12866. In addition, it has been determined that this final rule is not a major rule for the purpose of congressional review.

The primary benefit of this action is to remove uncertainty about the regulatory status of the petitioned substance. No compliance costs are associated with this final rule because no new activity is required and no current or future activity is prohibited by this rule.

B. Regulatory Flexibility Analysis

FDA has examined the impacts of this final rule under the Regulatory Flexibility Act. The Regulatory Flexibility Act (5 U.S.C. 601–612) requires Federal agencies to consider alternatives that would minimize the economic impact of their regulations on small entities. In compliance with the Regulatory Flexibility Act, FDA finds that this final rule will not have a significant impact on a substantial number of small entities.

No compliance costs are associated with this final rule because no new activity is required and no current or future activity is prohibited. Accordingly, under the Regulatory Flexibility Act (5 U.S.C. 605(b)), the agency certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

VII. Paperwork Reduction Act of 1995

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

VIII. Effective Date

As this rule recognizes an exemption from the food additive definition in the Federal Food, Drug, and Cosmetic Act, and from the approval requirements applicable to food additives, no delay in effective date is required by the Administrative Procedure Act (5 U.S.C. 553(d)). The rule will therefore be effective immediately (5 U.S.C. 553(d)(1)).

IX. References

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

1. Cannon, P. F., ''International Commission on the Taxonomy of Fungi (ICTF): Name Changes in Fungi of Microbiological Industrial and Medical Importance. Part 2,'' *Microbiological Sciences*, 3(9): 285 to 287, 1986.

2. Hjortkjaer, R. K. et al., ''Safety Evaluation of Celluclast TM, an Acid Cellulase Derived From *Trichoderma reesei*,'' *Food Chemical Toxicity*, 21 (1) 55 to 63, 1986.

3. ''Specifications for the Identity and Purity of Some Enzymes and Certain Other Substances'' in the Fifteenth Report of the Joint FAO/WHO Expert Committee on Food Additives; WHO Food Additive Series, No. 2, pp. 3 to 5, 1972 .

4. Rifai, M. A., ''A Revision of the Genus Trichoderma'' in *Mycological Papers*, No. 116, pp. 42 to 44, 1969.

5. Simmons, E. G., ''Classification of Some Cellulase Producing Trichoderma Species'' in *Second International Mycological Congress, Book of Abstracts*, p. 618, 1977.

6. Church, B. D., N. A. Nash, and W. Brosz, ''Use of Fungi Imperfecti in Treating Food Processing Wastes,'' in *Development in Industrial Microbiology*, vol. 13, pp. 30 to 46, 1972.

7. Memorandum from Food and Cosmetics Microbiology Branch, FDA, to GRAS review Branch, FDA, January 10, 1980.

8. King, K. W., and M. I. Vassal, ''Enzymes of the Cellulase Complex,'' in *Cellulase and Their Applications*, edited by R. F. Gould ''Advances in Chemistry Series'' #95, American Chemical Society, Washington, DC, pp. 7 to 25, 1969.

9.''Enzyme Nomenclature,'' recommendations (1972) of the International Union of Pure and Applied Chemistry and the International Union of Biochemistry, American Elsevier, New York, pp. 212 to 213, 1975.

10. ''Monograph on Enzyme Preparations'' in *Food Chemicals Codex*, 4th ed., National Academy Press, Washington, DC, pp. 129 to 134, 1996.

11. Underkofler, L. A., ''Enzymes'' in *CRC Handbook of Food Additives*, edited by T. E. Furia, The Chemical Rubber Co., Ohio, pp. 80 to 82, 1968.

12. Malmos, H., ''Industrial Applications of Cellulase: Enzyme Applications in Food, Pharmaceuticals and Other Industries,'' in *American Institute of Chemical Engineers Symposium Series*, vol. 74, 1976/77, pp. 93–99.

13. Toyoma, N., ''Applications of Cellulases in Japan,'' pp. 359 to 390, in *Cellulases and Their Applications*, edited by R. F. Gould, *Advances in Chemistry Series 195*, American Chemical Society, Washington, DC, 1969.

14. Memorandum from Food and Color Additives Review Section, FDA, to Direct Additives Branch, FDA, February 21, 1989.

15. Memorandum from Food and Color Additives Review Section, FDA, to Direct Additives Branch, FDA, June 22, 1990.

16. Memorandum from Additives Evaluation Branch, FDA, to Direct Additives Branch, FDA, July 11, 1990.

17. Memorandum from Additives Evaluation Branch, FDA, to Direct Additives Branch, FDA, June 29, 1993.

List of Subjects in 21 CFR Part 184

Food ingredients, Incorporation by reference.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 184 is amended as follows:

PART 184—DIRECT FOOD SUBSTANCE AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

1. The authority citation for 21 CFR part 184 continues to read as follows:

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

2. Section 184.1250 is added to subpart B to read as follows:

§ 184.1250 Cellulase enzyme preparation derived from Trichoderma longibrachiatum.

(a) Cellulase enzyme preparation is derived from a nonpathogenic, nontoxicogenic strain of *Trichoderma*

longibrachiatum (formerly *T. reesei*). The enzyme, cellulase, catalyzes the endohydrolysis of 1,4-beta-glycosidic linkages in cellulose. It is obtained from the culture filtrate resulting from a pure culture fermentation process.

(b) The ingredient meets the general and additional requirements for enzyme preparations in the monograph specifications on enzyme preparations in the ''Food Chemicals Codex,'' 4th ed. (1996), pp. 129 to 134, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies are available from the National Academy Press, 2101 Constitution Ave. NW., Box 285, Washington, DC 20055 (Internet ''http://www.nap.edu''), or may be examined at the Center for Food Safety and Applied Nutrition's Library, 200 C St. SW., rm. 3321, Washington, DC, or at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitation other than current good manufacturing practice. The affirmation of this ingredient as generally recognized as safe (GRAS) as a direct human food ingredient is based upon the following current good manufacturing practice conditions of use:

(1) The ingredient is used in food as an enzyme as defined in § 170.3(o)(9) of this chapter for the breakdown of cellulose.

(2) The ingredient is used in food at levels not to exceed current good manufacturing practice.

Dated: May 17, 1999.

L. Robert Lake,

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

[FR Doc. 99–13151 Filed 5–25–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

[SPATS No. IN–144–FOR]

Indiana Regulatory Program

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

ACTION: Final rule; clarification.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is clarifying its decision and responses to comments it received on an amendment to the Indiana regulatory program (Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment concerned revisions to and additions of statutes pertaining to other State and Federal laws and permit revisions. At the request of the Indiana Department of Natural Resources (IDNR), we are providing clarification of our decision findings and responses to comments for two provisions relating to permit revisions that we disapproved in a previous final rule decision document dated March 16, 1999 (64 FR 12890). This clarification supplements our previous findings made in section III. Director's Findings and our responses to comments made in section IV. Summary and Disposition of Comments of that final rule document, but does not affect our decision made in section V. Director's Decision.

EFFECTIVE DATE: May 26, 1999.

FOR FURTHER INFORMATION CONTACT: Andrew R. Gilmore, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Room 301, Indianapolis, Indiana 46204–1521. Telephone (317) 226–6700. Internet: INFOMAIL@indgw.osmre.gov.

SUPPLEMENTARY INFORMATION: On March 16, 1999, we published a final rule approving, with certain exceptions, a May 14, 1998, amendment to the Indiana program. The amendment concerned revisions to Indiana Code (IC) 14–8 and several sections of IC 14–34 made by the Indiana House Enrolled Act No. 1074 (HEA 1074). By letter dated May 12, 1999, the IDNR asked us to clarify our disapproval of two revisions to the Indiana Code that were included in HEA 1074. The IDNR was concerned that the language we used in the preamble discussion of the disapproved revisions would have an adverse impact on the existing approved Indiana program. This final rule clarifies the preamble discussion of our final decision and our responses to the comments received on these two revisions. First, we disapproved IC 14–34–5–7–7(a), which defined a permit revision. Second, we disapproved IC 14–34–5–8.2(4), which added a guideline that would require Indiana to approve postmining land use changes, with specified exceptions, as nonsignificant permit revisions.

IC 14–34–5–7(a), Definition of Permit Revision

As proposed, this provision would define a permit revision as a change in mining or reclamation operations from the approved mining and reclamation plans that adversely affect the permittee's compliance with state statutes and regulations. In the March 16, 1999, **Federal Register** notice disapproving this provision, we cited three problems with the proposed language. The discussion of those three problems is not intended to affect the currently approved regulation at 310 IAC 12–3–121(a)(1) cited by the Indiana Coal Council (ICC) in their comments of June 26,1998, in support of the proposed change (Administrative Record No. IND–1617). The portion of this regulation cited by the ICC requires revisions to permits for changes in surface coal mining or reclamation operations described in the original application and approved under the original permit, when such changes constitute a significant departure from the method of conduct of mining or reclamation operations contemplated by the original permit. In addition to the portion cited by the ICC, the regulation at 310 IAC 12–3–121(a)(1) goes on to state that changes which constitute a significant departure shall include, but not be limited to, those that could result in an operator's inability to comply with applicable requirements (emphasis added). The proposed statutory change we disapproved would have been in conflict with the current regulation in that it would have imposed a limitation inconsistent with this previous approved regulation. However, we do not intend for our disapproval of IC 14–34–5–7(a) to impact the current discretion that Indiana has within its approved program to determine when a revision is required.

IC 14–34–5–8.2(4) Post-Mining Land Use as Nonsignificant Permit Revisions

As proposed, this provision would classify a revision as nonsignificant that involved a land use change other than those listed in IC 14–34–5–8.1(8). Section 8.1(8) listed, as significant revisions, residential land uses, commercial or industrial land uses, recreational land uses, and developed water resources meeting the size criteria of 30 CFR 77.216(a). In a letter faxed to us on December 21, 1998, responding to our concerns regarding this provision, the IDNR indicated that it interpreted this provision to mean that Indiana would retain discretion to determine that land use changes other than those listed in IC 14–34–8.1(8) could be significant revisions (Administrative Record No. IND–1627). However, we disapproved this proposed revision because we feel that it is clear on its face that the proposed change would remove such discretion. We went on to explain

that we felt there are clearly times when other land use changes could warrant being considered a significant revision. However, it is not our intent to indicate that all other land use changes must be considered a significant revision. Nor is it our intent to alter OSM's position as reflected in other regulatory actions relating to significant permit revisions, such as those for the Federal program in Tennessee. We do feel that it is essential for Indiana to continue to have the discretion to determine, on a case-by-case basis, that other land use changes besides those listed in section 8.1(8) may constitute a significant revision. Therefore, this provision was disapproved.

Dated: May 18, 1999.

Brent Wahlquist,

Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 99–13336 Filed 5–25–99; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 36

RIN 2900–AI92

Loan Guaranty: Requirements for Interest Rate Reduction Refinancing Loans

AGENCY: Department of Veterans Affairs.

ACTION: Final rule; correction and delay of effective date.

SUMMARY: This document makes a correction to a final rule amending our loan guaranty regulations concerning the requirements for Interest Rate Reduction Refinancing Loans (IRRRLs). This document also delays for 14 days the effective date of the final rule. Under the final rule, generally to obtain an IRRRL the veteran's monthly mortgage payment must decrease. Also, the final rule provides that the loan being refinanced must not be delinquent or the veteran seeking the loan must meet certain credit standard provisions. The new effective date is June 7, 1999. These actions are needed because of a lawsuit concerning the final rule.

DATES: The final rule published in the **Federal Register** on April 23, 1999 (64 FR 19906), with changes made by this document, is effective June 7, 1999.

FOR FURTHER INFORMATION CONTACT: R.D. Finneran, Acting Assistant Director for Loan Policy and Valuation (262), Loan Guaranty Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–7368.

SUPPLEMENTARY INFORMATION: Under the authority of 38 U.S.C. chapter 37, VA guarantees loans made by lenders to eligible veterans to purchase, construct, improve, or refinance their homes (the term veteran as used in this document includes any individual defined as a veteran under 38 U.S.C. 101 and 3701 for the purpose of housing loans). This document amends VA's loan guaranty regulations by revising the requirements for VA-guaranteed IRRRLs.

The IRRRL program was established by Public Law No. 96–385, October 7, 1980. IRRRLs are designed to assist veterans by allowing them to refinance an outstanding VA-guaranteed loan with a new loan at a lower rate. The provisions of 38 U.S.C. 3703(c)(3) and 3710(e)(1)(C) allow the veteran to do so without having to pay any out-of-pocket expenses. The veteran may include in the new loan the outstanding balance of the old loan plus reasonable closing costs, including up to two discount points.

We published a final rule in the **Federal Register** on April 23, 1999 (64 FR 19906), to amend the loan guaranty regulations concerning the requirements for IRRRLs. Under the final rule, generally to obtain an IRRRL the veteran's monthly mortgage payment must decrease. Also, the final rule provides that the loan being refinanced must not be delinquent or the veteran seeking the loan must meet certain credit standard provisions.

We are changing 38 CFR 36.4306a(a)(6) in the final rule to reflect statutory provisions at 38 U.S.C. 3710(e)(1)(D) which state that the dollar amount of guaranty on IRRRLs may not exceed the greater of the original guaranty amount of the loan being refinanced or 25 percent of the loan. Since this change merely restates statutory provisions there is a basis for dispensing with notice-and-comment and delayed effective date provisions of 5 U.S.C. 553.

We are also changing the effective date of the final rule. The effective date for the final rule was scheduled to be May 24, 1999. This document changes the effective date to June 7, 1999.

These actions are needed because of a lawsuit concerning the final rule.

Accordingly, in FR Doc. 99–10146 published on April 23, 1999 (64 FR 19906) make the following correction. On page 19910, in § 36.4306a, paragraph (a)(6) is corrected to read as follows:

§ 36.4306a Interest rate reduction refinancing loan.

(a) * * *

(6) The dollar amount of guaranty on the 38 U.S.C. 3710(a)(8) or (a)(9)(B)(i) loan may not exceed the greater of the original guaranty amount of the loan being refinanced or 25 percent of the loan; and

* * * * *

Approved: May 21, 1999.

Togo D. West, Jr.,

Secretary of Veterans Affairs.

[FR Doc. 99–13396 Filed 5–21–99; 3:38 pm]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

OPP–300864; FRL–6081–8]

RIN 2070–AB78

Spinosad; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes time-limited tolerances for residues of spinosad in or on sweet corn at 0.02 parts per million (ppm), sweet corn forage at 0.6 ppm, sweet corn stover at 1.0 ppm, and a permanent tolerance for tuberous and corm vegetables (crop subgroup 1C) at 0.02 ppm. The Interregional Research Project Number 4 (IR-4) requested the tolerance for tuberous and corm vegetables (crop subgroup 1C). Dow AgroScience Company requested tolerances for sweet corn. These tolerances were requested under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996.

DATES: This regulation is effective May 26, 1999. Objections and requests for hearings must be received by EPA on or before July 26, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300864], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300864], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental

Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300864]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Sidney Jackson, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 272, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–7610, jackson.sidney@epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 8, 1999 (64 FR 17174) (FRL–6071–2), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) announcing the filing of a pesticide petition (PP) for tolerance by the Interregional Research Project Number 4 (IR-4), New Jersey Agricultural Experimental Station: P.O. Box 231, Rutgers University, New Brunswick, NJ and on September 16, 1998 (63 FR 49568) (FRL–6025–8) by the Dow AgroScience Company, 9330 Zionsville Road, Indianapolis, IN 46254. Each notice included a summary of the petition prepared by Dow AgroSciences, the registrant.

These petitions requested that 40 CFR 180.495 be amended by establishing tolerances for residues of the insecticide spinosad, in or on sweet corn at 0.02 ppm, sweet corn forage at 0.6 ppm, sweet corn stover at 1.0 ppm, and for tuberous and corm vegetables (crop subgroup 1C) at 0.02 ppm. Spinosad is a fermentation product of *Saccharopolyspora spinosa*. Spinosad consist of two related spinosyn compounds, Factor A and Factor D both of which serve as active ingredients. They are typically present at an 85:15 A:D ratio.

I. Background and Statutory Findings

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

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

II. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of spinosad and to make a determination on aggregate exposure, consistent with section 408(b)(2), for tolerances for residues of spinosad on sweet corn at 0.02 ppm, sweet corn forage at 0.6 ppm, sweet corn stover at 1.0 ppm and a tolerance for tuberous and corm vegetables (crop subgroup 1C) at 0.02 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

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

1. *Acute toxicity*. Spinosad has low acute toxicity. The rat oral lethal dose (LD_{50}) is 3,738 milligram(mg)/kilogram(kg) for males and > 5,000 mg/kg for females, whereas the mouse oral (LD_{50}) is >5,000 mg/kg. The rabbit dermal LD_{50} is >5,000 mg/kg and the rat inhalation lethal concentration (LC_{50}) is >5.18 mg/liter(l) air. In addition, spinosad is not a skin sensitizer in guinea pigs and does not produce significant dermal or ocular irritation in rabbits. End use formulations of spinosad that are water based suspension concentrates have similar low acute toxicity profiles.

2. *Genotoxicity*. Short term assays for genotoxicity consisting of a bacterial reverse mutation assay (Ames test), an *in vitro* assay for cytogenetic damage using the Chinese hamster ovary cells, an *in vitro* mammalian gene mutation assay using mouse lymphoma cells, an *in vitro* assay for DNA damage and repair in rat hepatocytes, and an *in vivo* cytogenetic assay in the mouse bone marrow (micronucleus test) have been conducted with spinosad. These studies show a lack of genotoxicity.

3. *Reproductive toxicity*. In a 2–generation reproduction study, groups of Sprague-Dawley rats (30/sex/group) received diets containing Spinosad (88.0%) at dose levels of 0, 0.005, 0.02, or 0.2% (3, 10, or 100 mg/kg/day, respectively) for two successive generations. For parental systemic toxicity, the no-observed adverse effect level (NOAEL) was 0.02% (10 mg/kg/day) and the lowest-observed adverse effect level (LOAEL) was 0.2% (100 mg/kg/day), based on increased heart, kidney, liver, spleen, and thyroid weights (both sexes), histopathology in the spleen and thyroid (both sexes), heart and kidney (males), and histopathologic lesions in the lungs and mesenteric lymph nodes (both sexes), stomach (females), and prostate. For offspring toxicity, the NOAEL was 0.02% (10 mg/kg/day) and the LOAEL was 0.2% (100 mg/kg/day) based on decreased litter size, survival (F2), and body weights. Reproductive effects at that dose level included increased incidence of dystocia and/or vaginal bleeding after parturition with associated increase in mortality of dams.

4. *Developmental toxicity.* In a prenatal developmental toxicity study, groups of pregnant Sprague-Dawley rats (30/group) received oral (gavage)

administration of Spinosad (88.6%) in aqueous 0.5% methylcellulose at dose levels of 0, 10, 50, or 200 mg/kg/day during gestation days 6 through 17. For maternal toxicity, the NOAEL was >200 mg/kg/day (the highest dose tested (HDT)); a LOAEL was not established. Marginal maternal toxicity was reported at this dose level (decreased body weight gain). Based upon the results of a range-finding study, which showed maternal toxicity (body weight and food consumption decreases at 100 and 300 mg/kg/day), the dose level of 200 mg/kg/day in the main study was considered adequate. For developmental toxicity, the NOAEL was >200 mg/kg/day; a LOAEL was not established. In the range-finding study, fetal body weight decrements occurred at 300 mg/kg/day.

In a prenatal developmental toxicity study, groups of pregnant New Zealand White rabbits (20/group) received oral (gavage) administration of Spinosad (88.6%) in 0.5% aqueous methyl cellulose at doses of 0, 2.5, 10, or 50 mg/kg/day during gestation days 7 through 19. For maternal toxicity, the NOAEL was ≧50 mg/kg/day HDT; a LOAEL was not established. At this dose, slight body weight loss was observed in the first few days of dosing, but this finding was not supported by other signs. In the range-finding study, inanition was observed at doses of 100, 200, and 400 mg/kg/day, with significant decreases in body weight gain during dosing. All does at these dose levels were sacrificed prior to scheduled termination; no fetal data were available. No evidence of developmental toxicity was noted. For developmental toxicity, the NOAEL was ≧50 mg/kg/day; a LOAEL was not established. (No fetal effects were noted for fetuses of the range-finding study at doses up to 50 mg/kg/day).

5. *Subchronic toxicity.* Spinosad was evaluated in 13–week dietary studies and showed NOAELs of 4.89 and 5.38 mg/kg/day, respectively in male and female dogs; 6 and 8 mg/kg/day, respectively in male and female mice; and 33.9 and 38.8 mg/kg/day, respectively in male and female rats. The LOAELs in the male rat and female rat were 68.5 and 78.1 mg/kg/day, respectively based on decreased body weight gain, anemia, and vacuolation in multiple organs (kidney, liver, heart, spleen, adrenals, and thyroid). No dermal irritation or systemic toxicity occurred in a 21–day repeated dose dermal toxicity study in rats given 1,000 mg/kg/day.

6. *Chronic toxicity and carcinogenicity*. Based on chronic testing with spinosad in the dog and the rat, the EPA has set a reference dose (RfD) of 0.027 mg/kg/day for spinosad. The RfD has incorporated a 100–fold safety factor to the NOAELs found in the chronic dog study to account for inter- and intra-species variation. The NOAELs shown in the dog chronic study were 2.68 and 2.72 mg/kg/day, respectively for male and female dogs. The NOAELs (systemic) shown in the rat chronic/carcinogenicity/neurotoxicity study were 9.5 and 12.0 mg/kg/day, respectively for male and female rats. The LOAEL (systemic) was 24.1 and 30.3 mg/kg/day for males and females, respectively based on vacuolation of epithelial follicular cells of the thyroid.

Using the Guidelines for Carcinogen Risk Assessment published September 24, 1986 (51 FR 33992), it is proposed that spinosad be classified as Group E for carcinogenicity (no evidence of carcinogenicity) based on the results of carcinogenicity studies in two species. There was no evidence of carcinogenicity in an 18–month mouse feeding study and a 24–month rat feeding study at all dosages tested. The NOAELs shown in the mouse carcinogenicity study were 11.4 and 13.8 mg/kg/day, respectively for male and female mice. A maximum tolerated dose was achieved at the top dosage level tested in both of these studies based on excessive mortality. Thus, the doses tested are adequate for identifying a cancer risk. Accordingly, a cancer risk assessment is not needed.

7. *Neurotoxicity*. In an acute neurotoxicity study, groups of Fischer 344 rats (10/sex/dose) received a single oral (gavage) administration of Spinosad (87.9%) at dose levels of 0, 200, 630, or 2,000 mg/kg. There were no effects on neurobehavioral endpoints or histopathology of the nervous system. For neurotoxicity, the NOAEL was >2,000 mg/kg (HDT); a LOAEL was not established.

In a subchronic neurotoxicity study, groups of Fischer 344 rats (10/sex/dose) were administered diets containing Spinosad at levels of 0, 0.003, 0.006, 0.012, or 0.06%(0, 2.2, 4.3, 8.6, or 42.7 mg/kg/day for males and 2.6, 5.2, 10.4, or 52.1 mg/kg/day for females, respectively). There were no effects on neurobehavioral endpoints or histopathology of the nervous system. For neurotoxicity, the NOAEL was ≧42.7 for males and ≥52.1 mg/kg/day for females (HDT).

In the 2–year chronic toxicity study, groups of Fischer 344 rats (65/sex/dose) received diets containing Spinosad at dose levels of 0, 0.005, 0.02, 0.05, or 0.1% (0, 2.4, 9.5, 24.1, or 49.4 mg/kg/day for males and 0, 3.0, 12.0, 30.3, or 62.2 mg/kg/day for females, respectively). Neurobehavioral testing performed at 3, 6, 9, and 12 months of study was negative, and histopathological evaluation of perfused tissues at study termination did not identify pathology of the central or peripheral nervous system. There was no evidence of neurotoxicity. For neuropathology, the NOAEL was 0.1% (>49.4 mg/kg/day for males and >62.8 mg/kg/day for females).

8. *Metabolism*. In rat metabolism of spinosad (technical), no major differences were found between the bioavailability, routes of excretion, or metabolism of ^{14}C-XDE-105 (Factor A) and ^{14}C-XDE-105 (Factor D) in Fischer 344 rats following oral administration as a suspension of 100 mg/kg bwt. The major elimination route was fecal excretion for both factors. About 80% (Factor A) and 66% (Factor D) was absorbed with about 20% (Factor A) and 34% (Factor D) of the dose eliminated unabsorbed in the feces. By 48 hours post-dosing, >60% (Factor A) & >80% (Factor D) had been recovered in the urine and the feces. Based on the terminal half-lives for fecal and urinary excretion, the elimination half-life for Factor A ranged from 25–42 hours and the half-life for Factor D ranged from 29–33 hours. The tissues and carcass contained very low levels of radioactivity at 168 hours post-dosing, <0.1% of the administered dose/gram tissue.The primary fecal, urinary, and the biliary metabolites were identified as the glutathione conjugates of the parent and *N*- and *O*-demethylated XDE-105. The absorption, distribution, metabolism, and elimination of ^{14}C-XDE-105 were similar for Factors A and D.

The residue of concern for tolerance setting purposes is the parent material (spinosyn A and spinosyn D). Thus, there is no need to address metabolite toxicity.

B. Toxicological Endpoints

1. *Acute toxicity*. EPA did not select a dose and endpoint for an acute dietary risk assessment due to the lack of toxicological effects attributable to a single exposure (dose) in studies available in the data base including oral developmental toxicity studies in rats and rabbits. In the acute neurotoxicity study the NOAEL was not shown at 2,000 mg/kg/day HDT. A risk assessment is not required as no appropriate endpoint is available.

2. *Short- and intermediate-term toxicity—Short- (1 day to 7 days), intermediate- (1 week to several months), and chronic-term occupational and residential dermal and inhalation toxicity*). EPA did not select a dose or

endpoint for short-, intermediate and long-term dermal risk assessments because of: (i) Lack of appropriate endpoints; (ii) the combination of molecular structure and size as well as the lack of dermal or systemic toxicity at 2,000 mg/kg/day in a 21–day dermal toxicity study in rats which indicates the lack of dermal absorption; and (iii) the lack of long-term exposure based on the current use pattern. EPA also determined that based on the current use pattern and exposure scenario, an inhalation risk assessment is not required.

3. *Chronic toxicity*. EPA has established the RfD for spinosad at 0.027 mg/kg/day. This RfD is based on a NOAEL of 2.68 mg/kg/day established in a chronic toxicity study in dogs. The LOAEL was 8.46 mg/kg/day based on vacuolation in glandular cells (parathyroid) and lymphatic tissues, arteritis and increases in serum enzymes such as alanine aminotransferase, and aspartate aminotransferase, and triglyceride levels in dogs fed spinosad in the diet at dose levels of 1.44, 2.68, or 8.46 mg/kg/day for 52 weeks. A 100–fold uncertainty factor (UF) was applied to the NOAEL of 2.68 mg/kg//day to account for inter- and intra- species variation. The resulting RfD was calculated to be 0.0268 mg/kg/day.

4. *Carcinogenicity*. The RfD Committee determined that there is no evidence of carcinogenicity in studies in either the mouse or rat. Therefore, a carcinogenic risk assessment is not required.

C. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.495) for the residues of spinosad, in or on a variety of raw agricultural commodities. Spinosad is registered for use on a number of agricultural commodities, including apples, Brassica vegetables, and fruiting vegetables (excluding cucurbits). Additionally, spinosad is registered for pest control in turfgrass and ornamental plants. Application rates range from 0.023 to 0.156 lb a.i./(acre)A, depending on the target pest and the crop. The maximum seasonal application rate is 0.45 lb a.i./A. Application intervals range from 7 to 14 days, with restriction against too many applications per season and/or pest generation, to avoid resistance. Pre-harvest intervals range from 1 to 14 days. Risk assessments were conducted by EPA to assess dietary exposures from spinosad as follows:

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure. The Agency did not select a dose and endpoint for an acute dietary risk assessment due to the lack of toxicological effects attributable to a single exposure (dose) in studies available in the data base including oral developmental toxicity studies in rats and rabbits. In the acute neurotoxicity study, the NOAEL was ≥2,000 mg/kg/day.

Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure. No acute toxicological endpoints were identified for spinosad due to the lack of toxicological effects attributable to a single exposure (dose). Therefore, the Agency concludes that there is a reasonable certainty of no harm from acute dietary exposure. Acute dietary risk assessment is not required.

ii. *Chronic exposure and risk.* In conducting this chronic dietary risk assessment, EPA has made very conservative assumptions: 100% of citrus, almonds, apples, fruiting (except cucurbit) vegetables, Brassica leafy vegetables, leafy vegetables, cottonseed, and ruminant commodities having spinosad tolerances will contain spinosad residues and those residues will be at the level of the established tolerance. Additionally, residues of 0.02 ppm were assumed for all other forms to support a pending section 18 action on spinosad. This results in an overestimate of human dietary exposure. Thus, in making a safety determination for proposed tolerance(s), EPA is taking into account this conservative exposure assessment.

The existing spinosad tolerances (published, pending, and including the necessary section 18 tolerances) result in a Theoretical Maximum Residue Contribution (TMRC) that is equivalent to the following percentages of the FQPA chronic population adjusted dose (cPAD) for the following population subgroups: for the U.S. population (48 states) the TMRC is 0.005658 mg/kg/day which represents 21% of the cPAD, and for children (1 to 6 years old), the highest exposed subgroup, the TMRC is 0.010522 mg/kg/day utilizing 39% of the cPAD.

2. *From drinking water.* Monitoring data depicting residue levels of spinosad in drinking water are not available. Therefore, EPA cannot perform a quantitative risk assessment for drinking water exposure. Instead, EPA had used modeled estimated environmental concentrations (EECs), and back-calculated drinking water levels of comparison (DWLOCs) to determine whether exposure to spinosad via drinking water is likely to be of concern.

EPA concludes that the available data on spinosad show that the compound is not mobile or persistent, and therefore has little potential to leach to ground water. Spinosad may however contaminate surface water upon the release of water from flooded fields to the environment. Additionally, EPA's Metabolism Assessment Review Committee determined that the spinosyn Factors A and D are not expected to reach groundwater (2/10/98). In order to assess drinking water exposures, EPA used the screening models PRZM (pesticide root zone model) and EXAMS (exposure analysis modeling systems) to generate surface water EECs associated with application of spinosad to various crops. Modeled scenarios were selected because they are expected to represent roughly the upper 90th percentile for surface water vulnerability, given the chemical's geographic use range. The Tier 2 chronic surface water EEC for spinosad is 0.092 µg/L and is based on application of the insecticide to cole crops (0.13 lb a.i./A/application, 0.45 lb a.i./A/season). The EEC value is over 1,000 times less than the lowest DWLOC. Based on the studies, the Agency concludes that drinking water is not expected to be a significant source of exposure to spinosad.

i. *Acute exposure and risk.* No acute toxicity endpoints were determined from testing and the Agency concludes that there is a reasonable certainty of no harm from acute risk from drinking water. No acute risk assessment is required.

ii. *Chronic exposure and risk.* For the most highly exposed population subgroup, children (1–6 years old), chronic dietary (food only) exposure occupies 39% of the cPAD. This is a conservative risk estimate for reasons described above. The chronic lowest DWLOC for the infants and children subgroup is 170 ppb. The chronic modeling estimates (EECs) for spinosad residues in surface water are as high as 0.092 ppb from use on Brassica leafy vegetables. The maximum estimated concentrations of spinosad in surface water are less than EPA's levels of concern for spinosad in drinking water as a contribution to chronic aggregate exposure. Therefore, taking into account present uses and uses proposed in this risk assessment, EPA concludes with reasonable certainty that residues of spinosad in drinking water (when considered along with other sources of

exposure for which the Agency has reliable data) would not result in unacceptable levels of aggregate human health risk at this time.

3. *From non-dietary exposure.* No acute dietary, cancer, or short-, intermediate-, or chronic-term dermal or inhalation endpoints were identified by the Agency. Spinosad is currently registered on turf grass, creating a potential for non-dietary oral exposure to children who ingest grass. To calculate a quantitative dietary risk from a potential ingestion of grass (in the absence of acute-, short-, or intermediate-term oral endpoints), EPA would need to default to the chronic dietary endpoint. This scenario would represent a child eating grass for > 6 months continuously. Based on the low application rate for spinosad on turf (0.41 lbs. ai./A.), its non-systemic nature, its short half life (especially in sunlight), and the rapid incorporation of spinosad metabolites into the general carbon pool, EPA believes that residues of spinosad on turf grass after application would be low and decrease rapidly over time. EPA believes that it is inappropriate to perform a quantitative dietary risk representing a chronic scenario from children eating turf grass. Qualitatively, the risk from children eating turf grass does not exceed the Agency's level of concern. Another registered product contains spinosad for use on structural lumber however, the product is injected into drilled holes and then sealed after treatment. The product can only be applied by commercial applicators with very minimal potential risk to the public. Due to the lack of toxicity endpoints (hazard) and minimal contact with the active ingredient during and after application, exposure to residential occupants is not expected. The Agency concludes that there is a reasonable certainty of no harm from non-dietary exposure.

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

EPA does not have, at this time, available data to determine whether spinosad has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, spinosad does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that spinosad has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

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

1. *Acute risk.* Because no acute dietary endpoint was determined from toxicity testing, the Agency concludes that there is a reasonable certainty of no harm from acute aggregate risk. An acute aggregate risk assessment is not required.

2. *Chronic risk.* Using the TMRC exposure assumptions described in this unit, EPA has concluded that aggregate exposure to spinosad from food will utilize 21 percent of the cPAD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is discussed below. EPA generally has no concern for exposures below 100% of the cPAD because the cPAD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to spinosad in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the cPAD. EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to spinosad residues.

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure.

No dermal or inhalation endpoints were identified by EPA. Due to the nature of the non-dietary use, the Agency believes that the use of spinosad in treating timbers will not result in any exposure through the oral route. Therefore, the chronic aggregate risk solely is the sum of food + water.

4. *Aggregate cancer risk for U.S. population.* The RfD Committee determined that there is no evidence of carcinogenicity in studies in either the mouse or rat. Therefore, a carcinogenic risk assessment is not required.

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

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

1. *Safety factor for infants and children*—i. *In general.* In assessing the potential for additional sensitivity of infants and children to residues of spinosad, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2–generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

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

ii. *Developmental toxicity studies.* See unit II.A.— Toxicological profile above.

iii. *Reproductive toxicity study.* See unit II.A.— Toxicological profile above.

iv. *Pre- and post-natal sensitivity.* There was no increased susceptibility to rats or rabbits following *in utero* and/or postnatal exposure to spinosad.

v. *Conclusion.* The data provided no indication of increased susceptibility of rats or rabbits to in utero and/or postnatal exposure to spinosad. In the prenatal developmental toxicity studies in rats and rabbits and the 2–generation reproduction study in rats, effects in the offspring were observed only at or below treatment levels which resulted in evidence of parental toxicity. In addition, all neurotoxicity studies were

negative for effects on the central or peripheral nervous system.

EPA determined that the 10X factor to account for enhanced sensitivity of infants and children (as required by FQPA) should be removed. The FQPA factor is removed because: (i) The data provided no indication of increased susceptibility of rats or rabbits to in utero and/or postnatal exposure to spinosad. In the prenatal developmental toxicity studies in rats and rabbits and the 2–generation reproduction study in rats, effects in the offspring were observed only at or below treatment levels which resulted in evidence of parental toxicity. (ii) No neurotoxic signs have been observed in any of the standard required studies conducted. (iii) The toxicology data base is complete and there are no data gaps. There is a complete toxicity database for spinosad and exposure data are complete or estimated based on data that reasonably account for potential exposures.

2. *Acute risk.* An acute risk assessment is not required because no acute toxicological endpoints were identified for spinosad. The Agency concludes that there is a reasonable certainty of no harm to infants and children from aggregate exposure.

3. *Chronic risk.* Using the conservative exposure assumptions described in this unit, EPA has concluded that aggregate exposure to spinosad from food will utilize 39% of the cPAD for infants and children. EPA generally has no concern for exposures below 100% of the cPAD because the cPAD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health.

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

G. Endocrine Disruption

EPA is required to develop a screening program to determine whether certain substances (including all pesticides and inerts) ''may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen, or such other endocrine effect...'' The Agency is currently working with interested stakeholders, including other government agencies, public interest groups, industry and research scientists in developing a screening and testing program and a priority setting scheme to implement this program. Congress has allowed 3 years from the passage of FQPA (August 3, 1999) to implement this program. At that time, EPA may require further testing of this active ingredient and end use products for endocrine disrupter effects.

III. Other Considerations

A. Metabolism In Plants and Animals

EPA has previously concluded that the nature of the spinosad residue in plants is adequately understood based on metabolism studies in apples, cabbage, cotton, tomatoes, and turnips. EPA's Metabolism Assessment Review Committee determined that the residue of concern is spinosad (a total of spinosyn A and spinosyn D), as noted in the 40 CFR 180.495 entry for cottonseed.

Similarly, EPA has previously concluded that the nature of the spinosad residue in animals is adequately understood based on metabolism studies in the goat and hen. Also noted in the 40 CFR 180.495 entry for cottonseed.

Additionally, EPA has reviewed the results of plant metabolism studies (apples, cabbage, cotton, tomatoes, turnips) and livestock metabolism studies (goat and hen). The metabolism of spinosad in plants and animals is adequately understood for the purposes of these tolerances. Based on structure/activity relationships, EPA concluded that the spinosad metabolites/fermentation impurities (spinosyns Factor B, Factor B or D, Factor K, and other related Factors) were of no more toxicological concern than the two parent compounds (spinosyns Factor A and Factor D).

EPA focused on the following data/information: the overall low toxicity of spinosad; the low levels of metabolites/fermentation impurities present; and that spinosad appears to photodegrade rapidly and become incorporated into the general carbon pool. EPA concluded that only 2 parent compounds (spinosyns Factor A and Factor D) need to be included in the tolerance expression and used for dietary risk assessment purposes.

B. Analytical Enforcement Methodology

Method GRM 94.02 (method for determination of spinosad residues in cottonseed and related commodities using HPLC/UV) underwent successful independent lab validation and EPA lab validation and has been submitted to FDA for inclusion in PAM II as Method I. Additional methods have been submitted for other crop matrices leafy vegetables - GRM 95.17; citrus - GRM 96.09; tree nuts - GRM 96.14; fruiting vegetables - GRM 95.04; and cotton gin byproducts - GRM 94.02.S1. All of these methods are essentially similar to GRM 94.02 and have been submitted to FDA for inclusion in PAM II as letter methods. Method GRM 94.02 is adequate for regulation of the tolerance expression.

Method GRM 95.03.R1 (method for determination of spinosad residues in ruminant commodities using high performance liquid chromatography/ultraviolet (HPLC/UV)) underwent successful validation by EPA's lab. The method was forwarded to FDA for inclusion in PAM II as a Roman numeral method.

Method RES 95114 (method for determination of spinosad residues in ruminant commodities using immunoassay) has also successfully passed validation by EPA's lab. The method was forwarded to FDA for inclusion in PAM II as a Roman numeral method.

Multi residue Methods (GLN 860.1360) - The results of subjecting spinosad to FDA Multi residue testing were previously reviewed. Spinosyns Factor A and D were not recovered from any of the protocols. The results have been sent to FDA.

Adequate enforcement methodology (example - gas chromotography) is available to enforce the tolerance expression. The method may be requested from: Calvin Furlow, PRRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm 101FF, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5229.

C. Magnitude of Residues

Magnitude of residue studies were conducted for potatoes at 14 sites. No quantifiable residues were observed in treated field samples at an application rate of 0.11 pounds active ingredient (lb a.i.) per acre or at an exaggerated application rate of 0.55 lb a.i. per acre. A potato processing study is not required because there were no quantifiable residues in the raw agricultural commodity (RAC) even at the 5X application rate (5X is the maximum theoretical concentration factor for potato). Potato is the representative crop for the tuberous and corm vegetables crop subgroup 1C.

Magnitude of residue studies were conducted for sweet corn at 12 sites, and 5X the label rate. Residues found in these studies ranged from none detected for sweet corn; 0.09 to 0.57 ppm for corn forage; and 0.03 to 0.82 ppm for corn fodder.

A ruminant feeding study was previously accepted by the Agency. Based on the results of this study, the data support the currently established tolerances: fat (of cattle, goats, hogs, horses, and sheep) at 0.6 ppm; meat (of cattle, goats, hogs, horses, and sheep) at 0.04 ppm; meat byproducts (of cattle, goats, hogs, horses, and sheep) at 0.2 ppm; milk fat at 0.5 ppm; and whole milk at 0.04 ppm. These levels are adequate for the feed items associated with all existing and proposed uses covered in this risk assessment.

Requirements for a poultry feeding study have been waived based on the minimal impact of spinosad residues in a typical poultry diet.

D. International Residue Limits

No CODEX, Canadian, or Mexican maximum residue levels (MRLs) have been established for residues of spinosad on any crops.

IV. Conclusion

Therefore, the time-limited tolerances are established for residues of spinosad in or on sweet corn at 0.02 ppm, sweet corn forage at 0.6 ppm, sweet corn stover at 1.0 ppm, and a permanent tolerance for tuberous and corm vegetables (crop subgroup 1C) at 0.02 ppm.

V. Objections and Hearing Requests

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

Any person may, by July 26, 1999, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given under the ''ADDRESSES'' section (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this regulation. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding tolerance objection fee waivers, contact James Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 239, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5697, tompkins.jim@epa.gov. Requests for waiver of tolerance objection fees should be sent to James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VI. Public Record and Electronic Submissions

EPA has established a record for this regulation under docket control number [OPP–300864] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Objections and hearing requests may be sent by e-mail directly to EPA at:

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E-mailed objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

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

VII. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

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

In addition, since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

VIII. Submission to Congress and the Comptroller General

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

List of Subjects in 40 CFR Part 180

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

Dated: May 14, 1999.

Richard P. Keigwin, Jr.,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—AMENDED

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

Authority: 21 U.S.C. 321(q), (346a), and 371.

2. In § 180.495, in paragraph (a), by revising the introductory text, by adding to the table entries for corn, sweet, forage; corn, sweet, kernal, plus cob with husk removed; corn, sweet, stover; and tuberous and corm vegetables (crop subgroup 1C) to read as follows:

§ 180.495 Spinosad; tolerances for residues.

(a) * * * Tolerances are established for residues of the insecticide spinosad in or on the food commodities in the table to this paragraph. Spinosad is a fermentation product of *Saccharopolyspora spinosa*. The product consists of two related active ingredients: Spinosyn A (Factor A; CAS 131929–60–7) or 2-[(6-deoxy-2,3,4-tri-*O*-methyl-α-*L*-manno-pyranosyl)oxy]-13-[[5-(dimethylamino)-tetrahydro-6-methyl-2*H*-pyran-2-yl]oxy]-9-ethyl-2,3,3a,5a,5b,6,9,10,11,12,13,14,16a,16b-tetradecahydro-14-methyl-1*H*-as-Indaceno[3,2-d]oxacyclododecin-7,15-dione; and Spinosyn D (Factor D; CAS 131929–63–0) or 2-[(6-deoxy-2,3,4-tri-*O*-methyl-α-*L*-manno-pyranosyl)oxy]-13-[[5-(dimethyl-amino)-tetrahydro-6-methyl-2H-pyran-2-yl]oxy]-9-ethyl-2,3,3a,5a,5b,6,9,10,11,12,13,14,16a, 16b-tetradecahydro-4,14-methyl-1*H*-as-Indaceno[3,2-d]oxacyclododecin-7,15-dione. Typically, the two factors are present at an 85:15 (A:D) ratio.

Commodity	Parts per million	Expiration/ Revocation date
* * * * *		
Corn, sweet, forage	0.6	06/20/01
Corn, sweet, kernel, plus cob with husk removed	0.02	06/20/01
Corn, sweet, stover	1.0	06/20/01
* * * * *		
Tuberous and corm vegetables (crop subgroup 1C)	0.02	None

* * * * *

[FR Doc. 99–12934 Filed 5–25–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300860; FRL–6081–2]

RIN 2070–AB78

Aspergillus flavus AF36; Pesticide Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a temporary exemption from the requirement of a tolerance for residues of the biological *Aspergillus flavus* AF36, a non-aflatoxin producing strain of *A. flavus,* on cotton when applied/used as an antifungal agent. The Interregional Research Project Number 4 (IR–4) submitted an amended Pesticide Petition (PP) 5E4575 to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), and also to comply with the Food Quality Protection Act of 1996 (FQPA) requesting an extension of the temporary exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of *Aspergillus flavus* AF36. The temporary exemption from the requirement of a tolerance will expire on December 30, 2000.

DATES: This regulation is effective May 26, 1999. Objections and requests for hearings must be received by EPA on or before July 26, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number [OPP–300860], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300860], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall 2 (CM #2), 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may be submitted electronically by sending electronic mail (e-mail) to: opp-docket. Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket number [OPP–300860]. No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Shanaz Bacchus, c/o Product Manager (PM) 90, Biopesticides and Pollution Prevention Division (7511C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: 9th fl., CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308–8097, e-mail: bacchus.shanaz@epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 19, 1999 (64 FR 8358) (FRL–6081–2), EPA issued a notice pursuant to section 408 of the FFDCA, 21 U.S.C. 346a, as amended by the FQPA of 1996 (Pub. L. 104–170) announcing the filing of a pesticide tolerance petition by the IR–4, New Jersey Agricultural Experiment Station, Technology Center of New Jersey, Rutgers University, 681 U.S. Highway #1 South, North Brunswick, NJ 08902–3390. The notice included a summary of the petition prepared by the petitioner, IR–4. The petition requested that 40 CFR part 180 be amended by establishing a temporary exemption from the requirement of a tolerance for residues of *Aspergillus flavus* AF36 in/on cotton in Arizona.

Comments submitted to the Agency regarding the proposed use of the antifungal agent were by the cotton growers in the region who were all in favor of the extension of the temporary exemption from the tolerance. Both the toxigenic and atoxigenic strains are naturally occurring in Arizona. The growers were of the opinion that this technology is likely to reduce the high levels of the naturally occurring, toxin-producing strain of *A. flavus* by displacement.

I. Background and Statutory Findings

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

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide us in residential settings.

This extension of the temporary exemption from the requirement of a tolerance is associated with an extension of an Experimental Use Permit (69224–EUP–1), published in the **Federal Register** of February 14, 1996, (61 FR 5771) (FRL–5347–5), which was granted to the Southern Regional Research Center, United States Department of Agriculture, Agricultural Research Service (USDA ARS), 1100 Robert E. Lee Blvd., New Orleans, LA 70179–0687 on May 28, 1996 and expires May 20, 1999. Approximately 1,120 acres of cotton in Yuma County, Arizona, were treated at a rate of 10 pounds (lbs.) of the pesticide per acre over the 3–year period. A temporary exemption from the requirement of a tolerance was established in connection with this EUP as published in the **Federal Register** of June 14, 1996, (61 FR 30235) (FRL–5377–6). No adverse effects were reported in the annual reports which the registrant submitted as required in the EUP.

USDA ARS has amended the EUP and extended treatment to a total of 20,000 acres of commercial cotton fields in 5 of the 15 counties in Arizona. The aerial applications are to be made in the following counties: Yuma (3,000 A), LaPaz (1,000 A), Maricopa (9,000 A), Mohave (1,000 A) and Pinal (6,000 A). The antifungal agent is applied prebloom to the soil of treated cotton fields, where the mycelia germinate to displace the naturally occurring toxigenic strain.

Of the strains of *A. flavus* which abound naturally in Arizona, this atoxigenic L strain comprises 15% of the natural microbial population in the soil, as opposed to the predominant S or toxigenic S strain.

II. Toxicological Profile

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

The toxicological profile in support of the extension of the temporary exemption from a tolerance of the residues of the atoxigenic (non-toxin producing) *A. flavus* AF36 demonstrates that the LD_{50} of *A. flavus* AF36 is greater than 5,000 milligrams/kilograms (mg/kg). No adverse clinical effects were observed after 14 days in rats treated by gavage with the microbial antifungal agent and no abnormalities or adverse effects were observed in any of the rats upon autopsy.

Studies were not conducted to evaluate the potential of the active ingredient as an agent linked to genotoxicity, or reproductive, developmental, subchronic or chronic effects, because the researchers have worked with the proposed microbial antifungal agent for several years in laboratory and field settings with no adverse effects. Also, the organism is a naturally occurring, ubiquitous microbe.

III. Aggregate Exposures

In examining aggregate exposure, section 408 of the FFDCA directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

There is a reasonable certainty that no harm will result from aggregate exposure to the U.S. population, including infants and children, to *A. flavus* AF36 from the limited use pattern of the experimental use permit. This includes all anticipated dietary exposures and all other exposures for which there is reliable information.

A. Dietary Exposure

1. *Food.* Application of the microbial pesticide prebloom in the cultural practice precludes the potential for direct residues of *A. flavus per se* to remain on the treated cotton. The proposed strain of *A. flavus*, AF36, is atoxigenic, i.e. not producing aflatoxin. Only the seed of the treated commodity, cotton, is likely to be processed as food for cottonseed oil. Residues of *A. flavus* AF36 or its metabolites are likely to be removed from cotton seed oil during this processing. Moreover, the applications are proposed for 5 of the 15 counties of Arizona only, on 3–7% of the total cotton, thus minimizing any potential dietary exposure. The Food and Drug Administration (FDA) regulates the levels of aflatoxin in cotton seed meal and other commodities associated with the production of cotton. Cottonseed is monitored for aflatoxin content during the ginning process, and all cotton seed from these experiments will be closely monitored for aflatoxin content as part of the experimental program. On the basis of the preceding discussion, dietary exposure to the treated commodity is likely to be minimal to human adults, infants and children.
exposure to immunocompromised human adults, infants and children. Moreover, the application of the microbial pesticide to specific counties during the EUP represents application to approximately 3–7% cultivated areas in these counties, thus minimizing exposure.

1. *Dermal exposure.* Non-occupational dermal exposure and risk to adults, infants and children are not likely if the pesticide is used as labeled. The antifungal agent is a naturally occurring microbe to be applied to the soil of cotton fields prebloom. It is ubiquitous in the environment. If the microbe exhibits dermal sensitizing properties which is associated with this genus of fungi, the boundaries and the large particle size of the spores are likely to maintain distribution near treated areas thus protecting nearby at-risk populations. Based on the low toxicity potential as evidenced by the data submitted, the microbial pesticide active ingredient is likely to pose a minimal to non-existent hazard if used as labeled.

2. *Inhalation exposure.* Based on the large spore size of AF36, and on the method of application to the soil of cultivated cotton fields prebloom with set boundaries, non-occupational inhalation exposure and risk to human adults, children and infants are likely to be minimal.

IV. Cumulative Effects

There are no other registered products containing *Aspergillus flavus* isolate AF36 or any other isolates (strains) of the microbial active ingredient. Moreover, data submitted to the Agency demonstrate that this strain does not produce aflatoxin on the crop or in artificial media in the lab. Data submissions also show that this strain has been shown to exclude the aflatoxin-producing strain when it is applied prior to flowering. Thus, the proposed use is not likely to result in appreciable increases in the long-term population of *A. flavus* on the crop beyond naturally occurring levels. Furthermore, there is no expectation of cumulative effects with other pesticides.

V. Determination of Safety for U.S. Population, Infants and Children

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of exposure (safety) for infants and children in the case of threshold effects to account for pre- and postnatal toxicity and the completeness of the data base unless EPA determines that a different margin of exposure (safety) will be safe for infants and children. In this instance, EPA believes there are reliable data to support the conclusion that there are no threshold effects of concern to infants, children and adults when *A. flavus* AF36 is used as labeled. As a result, the provision requiring an additional margin of exposure does not apply. The label will require applicators and other handlers to wear gloves, a dust/mist filtering respirator with National Institute of Occupational Safety and Health (NIOSH) approval prefix N-95, R-95 or P-95, long sleeved shirt and long pants, and shoes plus socks so worker exposure should not be a problem. Label language reflecting potential dermal sensitization is also required.

VI. Other Considerations

A. Endocrine Disruptors

EPA does not have any information regarding endocrine effects of this microbial pesticide at this time. The Agency is not requiring information on

the endocrine effects of this pesticide at this time; and Congress allowed 3 years after August 3, 1996, for the Agency to implement a screening and testing program with respect to endocrine effects.

B. Analytical Method(s)

Starter cultures are screened on the basis of vegetative incompatibility with the toxigenic strain, as well as for aflatoxin by standard procedures, which allow a zero tolerance for aflatoxin production. *A. flavus* AF36 does not demonstrate vegetative compatibility with the toxigenic S strain and has never been found to produce aflatoxin. According to the data submissions human pathogens are also within regulatory levels.

Treated cotton and its byproducts are screened for aflatoxin prior to introduction into the channels of commerce. FDA does not allow cottonseed products containing aflatoxin at 20 parts per billion (ppb) or higher to be used in dairy rations. FDA regulations also do not allow cottonseed products containing aflatoxin above 300 ppb to be used for feeding beef cattle.

C. Codex Maximum Residue Level

An exemption from temporary tolerance for residues of *Aspergillus flavus* isolate AF36 on cotton is currently in effect in conjunction with an Experimental Use Permit published in the **Federal Register** of June 14, 1996 (61 FR 30235).

VII. Objections and Hearing Requests

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

Any person may, by July 26, 1999, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the hearing clerk, at the address given under the ''ADDRESSES'' section (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the hearing clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding tolerance objection fee waivers, contact James Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 239, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5697, tompkins.jim@epa.gov. Requests for waiver of tolerance objection fees should be sent to James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VIII. Public Record and Electronic Submissions

EPA has established a record for this regulation under docket control number [OPP–300860] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

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E-mailed objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

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

IX. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule establishes an exemption from the tolerance requirement under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority*

Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

In addition, since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the [tolerance/exemption] in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq*.) do not apply. Nevertheless, the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

X. Submission to Congress and the Comptroller General

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

List of Subjects in 40 CFR Part 180

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

Dated: May 14, 1999.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

Authority: 21 U.S.C. 321(q), 346(a) and 371.

2. Section 180.1206 is added to subpart D to read as follows:

§ 180.1206 Aspergillus flavus AF 36; Exemption from the requirement of a tolerance.

Aspergillus flavus AF 36 is temporarily exempt from the requirement of a tolerance in/on cotton when used on cotton in Arizona in accordance with the Experimental Use Permit 69224–EUP–1. The temporary exemption from the requirement of a tolerance will expire on December 30, 2000.

[FR Doc. 99–13192 Filed 5–25–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300861; FRL–6080–6]

RIN 2070–AB78

Clomazone; Extension of Tolerance for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule extends a time-limited tolerance for residues of the herbicide clomazone and its metabolites in or on watermelons at 0.1 part per million (ppm) for an additional 2–year period, to May 30, 2001. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on watermelons. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA) requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA.

DATES: This regulation becomes effective May 26, 1999. Objections and

requests for hearings must be received by EPA, on or before July 26, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP-300861], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300861], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epa.gov. Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket control number [OPP–300861]. No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: David Deegan, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 286, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703) 308–9358; e-mail: deegan.dave@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a final rule, published in the **Federal Register** of May 2, 1997 (62 FR 24040)(FRL–5713–6), which announced that on its own initiative under section 408(e) of the FFDCA, 21 U.S.C. 346a(e) and (l)(6), it established a time-limited tolerance for the residues of clomazone and its metabolites in or on watermelons at 0.1 ppm, with an expiration date of May 30, 1998, which was extended until May 30, 1999 with a notice in the **Federal Register** which was published on March 18, 1998 (63 FR 13129) (FRL 5770–9). EPA established the tolerance because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

EPA received a request to extend the use of clomazone on watermelons for this year growing season due to ongoing lack of effective registered herbicides available to watermelon growers in mid-Atlantic states. After having reviewed submissions from Delaware, Maryland and Virginia, EPA concurs that emergency conditions exist for these states. EPA has authorized under FIFRA section 18 the use of clomazone on watermelons for control of broadleaf weeds and grasses in watermelons.

EPA assessed the potential risks presented by residues of clomazone in or on watermelons. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule of May 2, 1997 (62 FR 24040). Based on that data and information considered, the Agency reaffirms that extension of the time-limited tolerance will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerance is extended for an additional 2-year period. Although this tolerance will expire and is revoked on May 30, 2001, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on watermelons after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerance. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

I. Objections and Hearing Requests

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

Any person may, by July 26, 1999, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given under the ''ADDRESSES'' section (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding tolerance objection fee waivers, contact James Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 239, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5697, tompkins.jim@epa.gov. Requests for waiver of tolerance objection fees should be sent to James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a

reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

II. Public Record and Electronic Submissions

EPA has established a record for this regulation under docket control number [OPP–300861] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Objections and hearing requests may be sent by e-mail directly to EPA at:

opp-docket@epa.gov

E-mailed objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

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

III. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

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

In addition, since tolerances and exemptions that are established under section 408(l)(6) of FFDCA, such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq*.) do not apply. Nevertheless, the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

IV. Submission to Congress and the Comptroller General

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

List of Subjects in 40 CFR Part 180

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

Dated: May 17, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180 — [AMENDED]

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

Authority: 21 U.S.C. 321(q), 346a and 371.

§180.425 [Amended]

2. In §180.425, by amending the table in paragraph (b) by revising the date ''5/30/99'' to read ''5/30/01''.

[FR Doc. 99–13193 Filed 5–25–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300855; FRL–6079–1]

RIN 2070–AB78

Tebuconazole; Pesticide Tolerance for Emergency Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for residues of tebuconazole in or on garlic. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on garlic. This regulation establishes a maximum permissible level for residues of tebuconazole in this food commodity pursuant to section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. The tolerance will expire and is revoked on June 30, 2000.

DATES: This regulation is effective May 26, 1999. Objections and requests for hearings must be received by EPA on or before July 26, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number [OPP–300855], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300855], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epa.gov. Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket control number [OPP–300855]. No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Stephen Schaible, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 271, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, 703–308–9362; e-mail: schaible.stephen@epa.gov.

SUPPLEMENTARY INFORMATION: EPA, on its own initiative, pursuant to sections 408 and (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a and (l)(6), is establishing a tolerance for residues of the fungicide tebuconazole, in or on garlic at 0.1 part per million (ppm). This tolerance will expire and is revoked on June 30, 2000. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations.

I. Background and Statutory Findings

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

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

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

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

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

II. Emergency Exemption for Tebuconazole on Garlic and FFDCA Tolerances

While garlic rust is usually a disease of minor concern in California, it appeared as a serious pest problem in several garlic growing areas of the state in the 1997–98 growing season. The mild winter that year allowed the pathogen to survive the winter and cause infection early in the season. No fungicide is specifically registered for control of rust on garlic. The fungicides registered for use on garlic are not effective at controlling the disease under high pest pressure. Data presented by the state indicate that tebuconazole is highly effective at controlling the disease. EPA has authorized under FIFRA section 18 the use of tebuconazole on garlic for control of garlic rust in California. After having reviewed the submission, EPA concurs that emergency conditions exist for this state.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of tebuconazole in or on garlic. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment under section 408(e), as provided in section 408(l)(6). Although this tolerance will expire and is revoked on June 30, 2000, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on garlic after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by this tolerance at the time of that application. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

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

III. Aggregate Risk Assessment and Determination of Safety

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

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

A. Toxicological Profile

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

B. Toxicological Endpoint

1. *Acute toxicity*. The acute reference dose (RfD) of 0.1 milligrams/kilogram/day (mg/kg/day) for tebuconazole was established based on a developmental toxicity study in mice with a no observed adverse effect level (NOAEL) of 10 mg/kg/day for developmental toxicity. At the lowest observed adverse effect level (LOAEL) of 30 mg/kg/day, an increased incidence of runts (fetuses weighing less than 1.3 gram) were observed. An uncertainty factor of 100 was applied to the NOAEL to calculate the acute RfD of 0.1 mg/kg/day. EPA has determined that the 10x factor to account for enhanced susceptibility of infants and children (as required by FQPA) should be retained. This determination is based on the results of the developmental toxicity study in mice used to establish the acute RfD, other developmental toxicity studies in mice, rats and rabbits and the structural relationship of tebuconazole to several other triazole pesticides which also have been shown to induce developmental toxicity in rats and/or rabbits. For acute dietary exposure, EPA determined that the 10x safety factor is applicable to the subpopulations females (13+ years), as well as infants and children because the effects seen were developmental and are presumed to occur following ''acute'' exposures. For subpopulations other than females (13+ years), infants and children, a toxicological endpoint was not identified. Application of the 10x safety factor for enhanced susceptibility of infants and children to the acute RfD of 0.1 mg/kg/day results in an acceptable acute dietary exposure (food plus water) of 10% or less of the acute RfD.

2. *Short-and intermediate-term toxicity*. Toxicological endpoints for short- or intermediate-term dermal toxicity were not identified. Adverse systemic effects were not observed in dermal developmental toxicity studies in mice or rats at the limit dose of 1,000

mg/kg/day or in a 21-day dermal toxicity study in rabbits at the limit dose of 1,000 mg/kg/day. Therefore, risk assessments for short- or intermediate-term dermal exposure were not conducted.

A NOAEL of 0.0106 mg/liter/day (equivalent to 2.9 mg/kg/day) was identified as the toxicological endpoint for short- and intermediate-term (and chronic) inhalation toxicity based on a 21-day inhalation toxicity study in rats. At the LOAEL of 0.1558 mg/liter/day, piloerection and increased liver O-demethylase and N-demethylase activity were observed in both males and females. EPA determined that the 10x safety factor to account for enhanced susceptibility of infants and children (as required by FQPA) is not applicable for inhalation toxicity for the currently registered residential exposures to tebuconazole. A Margin of Exposure (MOE) of 100 or more for short- or intermediate-term non-dietary risk is acceptable for all subpopulations.

3. *Chronic toxicity*. EPA has established the RfD for tebuconazole at 0.03 (mg/kg/day). This RfD is based on a 1-year chronic feeding study in dogs in which the NOAEL was 100 ppm (2.96 mg/kg/day in males and 2.94 mg/kg/day in females) and the LOAEL was 150 ppm (4.39 mg/kg/day in males and 4.45 mg/kg/day in females), based on histopathological changes in the adrenal gland (hypertrophy of the zona fasciculata and fatty changes in the zona glomerulosa in both sexes and lipid hyperplasia in the cortex in males). An uncertainty factor of 100 was used to account for inter-species extrapolation and intra-species variability. EPA determined that the 10x factor for enhanced susceptibility of infants and children (as required by FQPA) is not applicable for chronic dietary exposure. The developmental effects which contributed to the decision to retain the 10x factor for acute dietary exposure are considered to be acute effects; maternal effects in those same studies were minimal. Additionally, the NOAEL on which the RfD is based is the lowest NOAEL in the toxicology data base for this chemical. A chronic dietary exposure (food plus water) of 100% or less of the chronic RfD is acceptable for all subpopulations.

4. *Carcinogenicity*. Tebuconazole is classified as a Group C (possible human) carcinogen. This decision was primarily based on results in a 91-week carcinogenicity study in mice in which the following effects were observed:

1. A statistically significant increase in the incidence of hepatocellular adenomas, carcinomas and combined adenomas/carcinomas in male mice at the highest dose tested (279 mg/kg/day).

2. A statistically significant increase in the incidence of hepatocellular carcinomas and combined adenomas/carcinomas in female mice at the highest dose tested (366 mg/kg/day). In addition, tebuconazole is structurally related to several other triazole pesticides that produce similar liver tumors in mice. For the purpose of carcinogenic risk assessment, the RfD methodology is used to estimate human risk.

C. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.474) for the residues of tebuconazole, in or on a variety of raw agricultural commodities. Tolerances have been established for milk and meat byproducts in connection with use of tebuconazole under a previous section 18. Risk assessments were conducted by EPA to assess dietary exposures and risks from tebuconazole as follows:

i. *Acute exposure and risk*. Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. An acute dietary endpoint of concern was identified for subpopulations females (13+ years), as well as infants and children.

An acute dietary (food only) probablistic risk analysis submitted in conjunction with another action was used to estimate acute dietary risk. The following assumptions were utilized in the Monte Carlo analysis:

1. Percent crop treated (PCT) data were used for all commodities.

2. Maximum residue levels from crop field trials for single serving commodities such as bananas and peaches were utilized.

3. Average residue levels from crop field trials were used for blended commodities such as fruit juices, grains and oils.

4. Anticipated residue levels for ruminant commodities were calculated using a livestock diet constructed using anticipated residue levels for livestock feed items. This analysis is considered to be highly refined. This analysis was run with 2,000 iterations. The results of the Monte Carlo analysis indicate that the percent of acute RfD for all children and infants subgroups as well as females 13+ years old are all below 10% of the RfD nursing infants (<1 year), 7%; non-nursing infants (<1 year), 7%; children (1 to 6 years) 9%, children (7 to 12 years) 3%; all infants (<1 year), 7%; females (13 years plus), 3%.

Section 408(b)(2)(E) authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate. As required by section 408(b)(2)(E), EPA will issue a data call-in for information relating to anticipated residues to be submitted no later than 5 years from the date of issuance of this tolerance.

Section 408(b)(2)(F) states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if the Agency can make the following findings: That the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; that the exposure estimate does not underestimate exposure for any significant subpopulation group; and if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

The Agency used PCT information as follows:

PCT refinements were assumed for all commodities evaluated in the probablistic risk assessment. For published uses, PCT data were based on information obtained from the registrant and were derived from Doane Marketing Research and USDA National Agricultural Statistics Service (NASS). For those commodities being requested under section 18, total U.S. acreage treated under section 18 was aggregated for each crop and compared to total acreage grown in the U.S. to derive a national PCT estimate.

The Agency believes that the three conditions, discussed in section 408 (b)(2)(F) concerning the Agency's responsibilities in assessing acute dietary risk findings, have been met. The PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. Typically, a range of estimates are supplied and the upper end of this

range is assumed for the exposure assessment. By using this upper end estimate of the PCT, the Agency is reasonably certain that the percentage of the food treated is not likely to be underestimated. The regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the regional consumption of food to which tebuconazole may be applied in a particular area.

ii. *Chronic exposure and risk*. The Agency conducted a chronic dietary exposure analysis and risk assessment. The analysis evaluated individual food consumption as reported by respondents in the USDA 1977–78 Nationwide Food Consumption Survey (NFCS) and accumulates exposure to the chemical for each commodity. In conducting the chronic dietary risk assessment, the Agency made the very conservative assumption that 100% of every commodity evaluated will contain residues and those residues will be at tolerance level; this assumption results in an overestimation of human dietary exposure. Thus, in making a safety determination for this time-limited tolerance, the Agency is taking into account this conservative exposure assessment.

The existing tebuconazole tolerances published, pending, and including the necessary section 18 tolerance(s) result in a Theoretical Maximum Residue Contribution (TMRC) that is equivalent to percentages of the RfD below 100% for all subgroups i.e., U.S. population, 11% and non-nursing infants (<1 year old), the most highly exposed subgroup, 37%.

2. *From drinking water*. Based on present data available to the Agency, tebuconazole is persistent and relatively immobile. There are no established Maximum Contaminant Level or health advisory levels for residues of tebuconazole in drinking water. Monitoring data for residues of tebuconazole in surface and ground water are not available. Tebuconazole is not included in the Pesticides in Ground Water Database (US EPA, 1992), and it was not an analyte in the National Pesticide Survey (US EPA, 1990).

EPA estimated exposure for tebuconazole for both surface and ground water based on available modeling. Environmental concentrations for surface water were estimated using modeling from Generic Estimated Environmental Concentration (GENEEC). For surface water, the maximum concentrations were used for acute risk calculations, the annual means (1–10 years) for chronic risk calculations. Current Agency policy allows that a factor of 3 be applied to GENEEC model values when determining whether or not a level of concern has been exceeded. If the GENEEC model value is ≤ 3 times the drinking water level of comparison (DWLOC), the pesticide is considered to have passed the screen. Acute and chronic ground water concentrations were estimated using the Screening Concentration in Ground Water (SCI-GROW) model. For the purposes of the screening level assessment, the maximum and average annual concentrations in ground water are not believed to vary significantly. DWLOCs will be compared directly to SCI-GROW values.

i. *Acute exposure and risk*. DWLOCs were calculated for acute exposures to tebuconazole in surface and ground water for females 13+ years old and children (1–6 years old). Relative to an acute toxicity endpoint, the acute dietary food exposure (from the probablistic analysis) was subtracted from the ratio of the acute NOAEL to the appropriate percentage acute RfD to obtain the acceptable acute exposure to tebuconazole in drinking water. DWLOCs were then calculated from this acceptable exposure using default body weights (60 kg for females and 10 kg for children) and drinking water consumption figures (2 liters for females 1 liter for children). Based on these calculations EPA's DWLOC for acute dietary risk is 14 parts per billion (ppb) for children (1-6 years old) and 200 ppb for females 13+ years old.

Maximum concentrations of tebuconazole in surface and ground water are estimated to be 14 ppb and 0.3 ppb, respectively. The maximum estimated concentrations of tebuconazole in surface and ground water do not exceed EPA's levels of concern for acute exposure in drinking water for the females 13+ and children.

ii. *Chronic exposure and risk*. EPA has calculated DWLOCs for chronic exposures to tebuconazole in surface and ground water. To calculate the DWLOC for chronic exposures relative to a chronic toxicity endpoint, the chronic dietary food exposure was subtracted from the chronic RfD (0.03 mg/kg/day) to obtain the acceptable chronic exposure to tebuconazole in drinking water. DWLOCs were then calculated from this exposure using default body weights (70 kg for U.S. population, 60 kg for females 10 kg for children) and drinking water consumption figures (2 liters U.S. population females 1 liter children). Based on these calculations EPA's DWLOCs for chronic risk are 950 ppb for the U.S. population, 780 ppb for females and 190 ppb for non-nursing infants (<1 year old).

Estimated annual average concentrations of tebuconazole in surface water and ground water are 10 ppb and 0.3 ppb, respectively. The estimated annual average concentrations of tebuconazole in surface and ground water are less than EPA's levels of concern for chronic exposure in drinking water.

3. *From non-dietary exposure*. No short- or intermediate-term dermal toxicological endpoints were identified. Tebuconazole's registered residential uses are for the formulation of wood-based composite products, wood products for in-ground contact, plastics, exterior paints, glues and adhesives. Currently, the only residential end-use products on the market are for exterior treated wood use. Exposure via incidental ingestion (by children) and inhalation are not a concern for these products which are used outdoors. No paints or other end-use products containing tebuconazole are available for interior use. Accordingly, residential exposure is not expected at this time.

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

EPA does not have, at this time, available data to determine whether tebuconazole has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, tebuconazole does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that tebuconazole has a

common mechanism of toxicity with other substances. For more information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

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

1. *Acute risk*. A toxicological endpoint was identified for acute dietary risk assessments for subpopulations females (13+ years), infants and children. The 10x safety factor for enhanced susceptibility of infants and children as required by FQPA is applicable for all of these subgroups. Therefore, 10% or less of the acute RfD of 0.1 mg/kg/day results in an acceptable acute dietary exposure (food plus water).

An acute dietary (food only) probablistic risk analysis resulted in 3% of the acute RfD utilized for females (13+ years). The maximum estimated concentrations of tebuconazole in surface and ground water do not exceed EPA's levels of concern for acute exposure in drinking water for the females 13+. Currently the only residential end-use products on the market are for exterior treated wood use. Exposure via incidental ingestion (by children) and inhalation are not a concern for these products which are used outdoors. No paints or other end-use products containing tebuconazole are available for interior use. Accordingly residential exposure is not expected with these uses. Therefore, EPA concludes with reasonable certainty that residues of tebuconazole do not contribute significantly to the aggregate acute risk at the present time.

2. *Chronic risk*. Using the TMRC exposure assumptions described in this unit, EPA has concluded that aggregate exposure to tebuconazole from food will utilize 11% of the RfD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is non-nursing infants (< 1 yr.), discussed below. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Estimated environmental concentrations of tebuconazole in surface water and ground water do not exceed chronic DWLOCs calculated by the Agency; therefore, EPA does not expect the aggregate exposure to exceed 100% of the RfD.

3. *Short- and intermediate-term risk*. Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure.

No short- or intermediate-term dermal toxicological endpoints were identified. Also, no residential exposure is expected from the current residential uses. Thus, no risk assessments were conducted for residential exposure. Therefore, EPA concludes with reasonable certainty that tebuconazole does not contribute significantly to the aggregate shortand intermediate-term risk at the present time.

4. *Aggregate cancer risk for U.S. population*. Tebuconazole is classified as a Group C (possible human) carcinogen. Since, for the purpose of carcinogenic risk assessment the Reference Dose (RfD) methodology was used, the discussion for chronic risk (11% of RfD utilized) above applies to cancer risk as well. Therefore, EPA concludes with reasonable certainty that tebuconazole does not contribute significantly to the aggregate cancer risk at the present time.

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

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

1. *Safety factor for infants and children*—i. *In general*. In assessing the potential for additional sensitivity of infants and children to residues of tebuconazole, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

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

ii. *Developmental toxicity studies*. In two associated oral developmental toxicity studies in mice, the maternal NOAEL was 10 mg/kg/day and the LOAEL was 20 mg/kg/day, based on decreased hematocrit and effects in the liver. The developmental toxicity NOAEL was 10 mg/kg/day and the LOAEL was 30 mg/kg/day, based on increased numbers of runts (fetuses weighing less than 1.3 gram). In addition, at 100 mg/kg/day, frank malformations in the skull, brain and spinal column and a reduced rate of ossification in the cranium were observed. In a dermal developmental toxicity study in mice, no toxicologically significant maternal toxicity or developmental toxicity was observed at the limit dose of 1,000 mg/kg/day.

In an oral developmental toxicity study in rats, the maternal NOAEL was 30 mg/kg/day and the LOAEL was 60 mg/kg/day, based on increased liver weight. The developmental toxicity NOAEL was 30 mg/kg/day and the LOAEL was 60 mg/kg/day, based on delayed ossification of several bones and increased numbers of fetuses with supernumerary ribs. In addition, at 120 mg/kg/day, increased resorptions, decreased fetal body weights and frank malformations in two fetuses (missing tail, agnatha, microtomia and anophthalmia) were observed. In a dermal developmental toxicity study in rats, no toxicologically significant maternal toxicity or developmental toxicity was observed at the limit dose of 1,000 mg/kg/day.

In an oral developmental toxicity study in rabbits, the maternal NOAEL was 30 mg/kg/day and the LOAEL was 100 mg/kg/day, based on decreased body weight gain and decreased food consumption during the dosing period. The developmental toxicity NOAEL was 30 mg/kg/day and the LOAEL was 100 mg/kg/day, based on increased postimplantation loss, increased frank malformations, hydrocephalus and delayed ossification of bones. In another oral developmental toxicity study in rabbits, the maternal NOAEL was <10

mg/kg/day and the LOAEL was 10 mg/kg/day, based on increased incidences of single cell necrosis (minimal severity) in liver cells. The maternal NOAEL from this study was not used to determine the acute RfD because single cell necrosis was not considered to result from a single exposure. The developmental toxicity NOAEL was 30 mg/kg/day and the LOAEL was 100 mg/kg/day, based on increased postimplantation loss, decreased fetal body weights, increased percentage of fetuses with abnormalities (including runts, hemidiaphragm, limb abnormalities and neural tube defects characterized as meningocoele and spina bifida) and delayed ossification of bones.

iii. *Reproductive toxicity study*. In a 2-generation reproduction study in rats, the parental (systemic) toxicity NOAEL was 15 mg/kg/day and the LOAEL was 50 mg/kg/day, based on loss of hair, decreased body weights, decreased food consumption, increased severity of spleen hemosiderosis and decreased liver and kidney weights. For offspring toxicity, the NOAEL was 15 mg/kg/day and the LOAEL was 50 mg/kg/day, based on decreased pup body weights from birth through weeks 3–4 in all litter groups.

iv. *Pre-and postnatal sensitivity*. The above studies meet the standard toxicology data requirements, as required for a food-use chemical, in 40 CFR part 158. However, after evaluation of the findings in these studies, particularly with respect to effects on the fetal nervous system, together with a consideration of neurotoxic effects observed in several other developmental toxicity studies on structurally related triazole pesticides, the Agency requested a postnatal developmental neurotoxicity study in rats (Guideline 83–6) be conducted. The EPA notes effects on the nervous system of fetuses in studies on tebuconazole occurred only at doses of 100 mg/kg/day or higher—i.e., at doses at least ten-fold higher than the developmental toxicity NOAEL (10 mg/kg/day) to be used for the assessment of acute dietary risk.

On the basis of comparative NOAELs and LOAELs, it was determined there was no indication of increased susceptibility of the offspring of mice, rats or rabbits resulting from prenatal and/or postnatal exposure to tebuconazole. However, the maternal effects observed in the developmental toxicity studies at the LOAEL were of minimal concern and did not increase substantially in severity at higher doses, whereas the developmental effects at the LOAEL were pronounced and at higher doses were quite severe (including frank malformations) in mice (at 100 mg/kg/day), rats (at 120 mg/kg/day) and rabbits (at 100 mg/kg/day). Based on a consideration of all the above findings, the Agency retained the 10x factor for enhanced susceptibility to infants and children. The 10x factor is applicable to acute dietary exposures for the subpopulations females (13+ years), infants and children. The 10x factor for enhanced sensitivity of infants and children is not applicable to chronic exposure analysis.

v. *Conclusion*. There is a complete toxicity data base for tebuconazole and exposure data are complete or estimated based on data that reasonably accounts for potential exposures.

2. *Acute risk*. An acute dietary (food only) probablistic risk analysis resulted in the following percentages for the acute RfD: nursing infants (<1 year), 7%; non-nursing infants (<1 year), 7%; children (1 to 6 years) 9%, children (7 to 12 years) 3%; and all infants (<1 year), 7%. The maximum estimated concentrations of tebuconazole in surface and ground water do not exceed EPA's levels of concern for acute exposure in drinking water for children. Currently, the only residential end-use products on the market are for exterior treated wood use. Exposure via incidental ingestion (by children) and inhalation are not a concern for these products which are used outdoors. No paints or other end-use products containing tebuconazole are available for interior use. Accordingly residential exposure is not expected with these uses. Therefore, EPA concludes with reasonable certainty that residues of tebuconazole do not contribute significantly to the aggregate acute risk at the present.

3. *Chronic risk*. Using the exposure assumptions described in this unit, EPA has concluded that aggregate exposure to tebuconazole from food will utilize up to 37% of the RfD for infants and children. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. As stated above, residential exposure to tebuconazole is not expected for the currently registered uses. Estimated environmental concentrations of tebuconazole in surface water and ground water do not exceed chronic DWLOCs calculated by the Agency; therefore, EPA does not expect the aggregate exposure to exceed 100% of the RfD.

4. *Short- or intermediate-term risk*. As stated above, residential exposure to tebuconazole is not expected for the currently registered uses.

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

IV. Other Considerations

A. Metabolism In Plants and Animals

The nature of the residue in plants is understood based on metabolism studies in grapes, wheat and peanuts. For the purpose of this section 18 only, the nature of the residue in garlic is considered to be adequately understood. The residue of concern in plants is tebuconazole *per se*.

B. Analytical Enforcement Methodology

Method 101341, a GC/NPD method, is adequate to enforce the tolerance expression. The method may be requested from: Calvin Furlow, PRRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm 101FF, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5229.

C. Magnitude of Residues

No residue data were provided for garlic. Residue data were translated from dry bulb onion data generated in Mexico. Based on these data, residues of tebuconazole are not expected to exceed 0.1 ppm on garlic as a result of the proposed section 18 use.

D. International Residue Limits

There are no Codex, Canadian, or Mexican maximum residue limits (MRLs) for residues of tebuconazole in/on garlic. International harmonization is thus not an issue for this time-limited tolerance.

E. Rotational Crop Restrictions

A plant back interval of 120 days after last application for crops not listed on the label is required.

V. Conclusion

Therefore, the tolerance is established for residues of tebuconazole in garlic at 0.1 ppm.

VI. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to ''object'' to a tolerance regulation as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These

regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by July 26, 1999, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given under the ''ADDRESSES'' section (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding tolerance objection fee waivers, contact James Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 239, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305-5697, tompkins.jim@epa.gov. Requests for waiver of tolerance objection fees should be sent to James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VII. Public Record and Electronic Submissions

EPA has established a record for this regulation under docket control number [OPP–300855] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Objections and hearing requests may be sent by e-mail directly to EPA at:

opp-docket@epa.gov.

E-mailed objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

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

VIII. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

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

In addition, since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(l)(6), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.) do not apply. Nevertheless, the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments ''to provide meaningful and timely input in the development of

regulatory proposals containing significant unfunded mandates.''

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

IX. Submission to Congress and the Comptroller General

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

List of Subjects in 40 CFR Part 180

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

Dated: May 12, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

Authority: 21 U.S.C. 321(q), 346a and 371.

2. In §180.474, by alphabetically adding the following commodity ''garlic'' to the table in paragraph (b) to read as follows:

§180.474 Tebuconazole; tolerances for residues.

* * * * *

(b) * * *

Commodity	Parts per million	Expiration/ Revocation Date
* * *	*	*
Garlic	0.1	6/30/00
* * *	*	*

* * * * *

[FR Doc. 99–12935 Filed 5–25–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR PART 180

[OPP–30116; FRL–6056–6]

RIN 2070–AB78

Pesticide Tolerance Processing Fees

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule increases fees charged for processing tolerance petitions for pesticides under the Federal Food, Drug, and Cosmetic Act (FFDCA). The change in fees reflects a 3.68 percent cost of living and locality pay increase for civilian Federal General Schedule (GS) employees working in the Washington, DC and Baltimore, MD metropolitan area in 1999.

This rule does not, however, reflect the requirements in the Food Quality Protection Act of 1996 (FQPA), which states that the Agency shall collect tolerance fees that, in the aggregate, will cover all costs associated with processing tolerance actions. The amendments to the tolerance fee schedule to meet the FQPA requirement will be addressed in a seperate rulemaking, the proposal for which is expected shortly.

EFFECTIVE DATE: June 25, 1999.

FOR FURTHER INFORMATION CONTACT: About this rule contact Ed Setren, Resources Management Staff (7501C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., S.W., Washington, DC 20460, telephone: (703) 305–5927, fax: (703) 305–5060, e-mail: setren.edward@epa.gov. For further technical information about tolerance petitions and individual fees contact: Sonya Brooks, Resources Management Staff (7501C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, telephone: (703) 308–6423, fax: (703) 305–5060, e-mail: brooks.sonya@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this rule apply to me?

This rule may directly affect any person who might petition the Agency for new tolerances, hold a pesticide registration with existing tolerances, or anyone who is interested in obtaining or retaining a tolerance in the absence of a registration. This group can include pesticide manufacturers or formulators, companies that manufacture inert ingredients, importers of food, grower groups, or any person who seeks a tolerance. The vast majority of potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	SIC	Examples of Potentially Affected Entities
Chemical Industry	325320	0286	pesticide chemical manufacturers,
.....	115112	0287	formulators, chemical manufacturers of inert ingredients

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. Other types of entities not listed above could also be regulated. If available, the four-digit Standard Industrial Classification (SIC) codes or the six-digit North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this rule applies to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in the rule (see Unit IV). If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed in the ''FOR FURTHER INFORMATION CONTACT'' section.

II. How can I get additional information or copies of this document or other documents?

A. Electronically.

You may obtain electronic copies of this document and various support documents from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''Federal Register - Environmental Documents.'' You can also go directly to the ''**Federal Register**'' listings at http://www.epa.gov/homepage/fedrgstr/.

B. In person or by phone.

If you have any questions or need additional information about this action, you may contact the technical person identified in the ''FOR FURTHER INFORMATION CONTACT'' section. In addition, the official record for this rule, including the public version, has been established under docket control number [OPP–30116]. A public version of this record, including printed, paper versions of any electronic comments, which does not include any information claimed as CBI, is available for inspection in Rm. 119, Crystal Mall 2 (CM #2), 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Public Information and Records Integrity Branch telephone number is (703) 305–5805.

III. What action is the Agency taking in this rule?

With this rule, the Agency is increasing the fees charged for processing tolerance petitions for pesticides under the Federal Food, Drug, and Cosmetic Act (FFDCA). The pay raise in 1999 for Federal General Schedule employees working in the Washington, DC/Baltimore, MD metropolitan pay area is 3.68 percent. This increase in the fees charged for processing tolerance petitions reflects this recent pay raise.

IV. Why is the Agency taking this action?

The EPA is charged with the administration of section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA). Section 408 authorizes the Agency to establish tolerance levels and exemptions from the requirements for tolerances for raw agricultural commodities. EPA is required to collect fees that will, in the aggregate, be sufficient to cover the costs of processing petitions, so that the tolerance program is as self-supporting as possible. The fee increases identified by this rule do not reflect the requirements of FFDCA section 408(m)(1) as amended by the Food Quality Protection Act (FQPA) of 1996 which states that the Agency shall collect tolerance fees that, in the aggretate, will cover all costs associated with processing tolerance actions. Modifications of the tolerance fee schedule to meet the FQPA requirement will be addressed by a proposed rule now in development.

The current fee schedule for tolerance petitions published in the **Federal Register** on May 27, 1998 (63 FR 28909)(FRL–5775–4), codified at 40 CFR 180.33, and became effective on June 26, 1998. At that time the fees were increased 2.45 percent in accordance with a provision in the regulation that provides for automatic annual adjustments to the fees based on annual percentage changes in Federal salaries (40 CFR 180.33(o)).

The Federal Employees Pay Comparability Act of 1990 (FEPCA) initiated locality-based comparability pay, known as ''locality pay''. The intent of the legislation is to make Federal pay more responsive to local labor market conditions by adjusting General Schedule salaries on the basis of a comparison with non-Federal rates on a geographic, locality basis. The processing and review of tolerance petitions is conducted by EPA employees working in the Washington, DC/ Baltimore, MD pay area.

The pay raise in 1999 for Federal General Schedule employees working in the Washington, DC/Baltimore, MD metropolitan pay area is 3.68 percent; therefore, the tolerance petition fees are being increased by 3.68 percent. The entire revised fee schedule in § 180.33 is presented for the reader's convenience. (All fees have been rounded to the nearest $25.00.)

V. Why is EPA issuing this action as a Final Rule?

EPA is publishing this action as a final rule pursuant to 40 CFR 180.33(o), which reads in part:

(o) This fee schedule will be changed annually by the same percentage as the percent change in the Federal General Schedule (GS) pay scale [...]. When automatic adjustments are made based on the GS pay scale, the new fee schedule will be published in the **Federal Register** as a final rule to become effective thirty days or more after publication, as specified in the rule.

VI. What regulatory assessments requirements apply to this action?

This action does not require review by the Office of Management and Budget (OMB) under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or Executive Order 13045, entitled *Protection of Children From Environmental Health Risks and Safety* (62 FR 19885, April 23, 1997). Nor does it require any action under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA)(Pub.L. 104-4), Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19,1998), or Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994). In addition, this action does not

involve any technical standards that trigger the requirement in section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), 15 U.S.C. 272 note) which directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or impractical. Since this action does not require a proposal, no action is needed under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq*.).

VII. Must EPA submit this action to Congress and the General Accounting Office?

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

List of Subjects in 40 CFR part 180

Administrative practice and procedures, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements

Dated: May 12, 1999.

Susan H. Wayland,

Acting Assistant Administrator Office of Prevention, Pesticides and Toxic Substances.

Therefore, 40 CFR part 180 is amended as follows:

Part 180—[AMENDED]

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

Authority: 21 U.S.C. 321(q), 346(a) and 371.

2. Section 180.33 is revised to read as follows:

§ 180.33 Fees.

(a) Each petition or request for the establishment of a new tolerance or a tolerance higher than already established, shall be accompanied by a fee of $68,025, plus $1,700 for each raw agricultural commodity in excess of nine for which the establishment of a tolerance is requested, except as provided in paragraphs (b), (d), and (h) of this section.

(b) Each petition or request for the establishment of a tolerance at a lower numerical level or levels than a tolerance already established for the same pesticide chemical, or for the establishment of a tolerance on additional raw agricultural commodities at the same numerical level as a tolerance already established for the same pesticide chemical, shall be accompanied by a fee of $15,550 plus $1,025 for each raw agricultural commodity for which a tolerance is requested.

(c) Each petition or request for an exemption from the requirement of a tolerance or repeal of an exemption shall be accompanied by a fee of $12,550.

(d) Each petition or request for a temporary tolerance or a temporary exemption from the requirement of a tolerance shall be accompanied by a fee of $27,175 except as provided in paragraph (e) of this section. A petition or request to renew or extend such temporary tolerance or temporary exemption shall be accompanied by a fee of $3,850.

(e) A petition or request for a temporary tolerance for a pesticide chemical which has a tolerance for other uses at the same numerical level or a higher numerical level shall be accompanied by a fee of $13,525 plus $1,025 for each raw agricultural commodity on which the temporary tolerance is sought.

(f) Each petition or request for repeal of a tolerance shall be accompanied by a fee of $8,500. Such fee is not required when, in connection with the change sought under this paragraph, a petition or request is filed for the establishment of new tolerances to take the place of those sought to be repealed and a fee is paid as required by paragraph (a) of this section.

(g) If a petition or a request is not accepted for processing because it is technically incomplete, the fee, less $1,700 for handling and initial review, shall be returned. If a petition is withdrawn by the petitioner after initial processing, but before significant Agency scientific review has begun, the fee, less $1,700 for handling and initial review, shall be returned. If an unacceptable or withdrawn petition is resubmitted, it shall be accompanied by the fee that would be required if it were being submitted for the first time.

(h) Each petition or request for a crop group tolerance, regardless of the number of raw agricultural commodities involved, shall be accompanied by a fee equal to the fee required by the analogous category for a single tolerance that is not a crop group tolerance, i.e., paragraphs (a) through (f) of this section, without a charge for each commodity where that would otherwise apply.

(i) Objections under section 408(d)(5) of the Act shall be accompanied by a filing fee of $3,400.

(j)(1) In the event of a referral of a petition or proposal under this section to an advisory committee, the costs shall be borne by the person who requests the referral of the data to the advisory committee.

(2) Costs of the advisory committee shall include compensation for experts as provided in § 180.11(c) and the expenses of the secretariat, including the costs of duplicating petitions and other related material referred to the committee.

(3) An advance deposit shall be made in the amount of $33,950 to cover the costs of the advisory committee. Further advance deposits of $33,950 each shall be made upon request of the Administrator when necessary to prevent arrears in the payment of such costs. Any deposits in excess of actual expenses will be refunded to the depositor.

(k) The person who files a petition for judicial review of an order under section 408(d)(5) or (e) of the Act shall pay the costs of preparing the record on which the order is based unless the person has no financial interest in the petition for judicial review.

(l) No fee under this section will be imposed on the Inter-Regional Research Project Number 4 (IR-4 Program).

(m) The Administrator may waive or refund part or all of any fee imposed by this section if the Administrator determines in his or her sole discretion that such a waiver or refund will promote the public interest or that payment of the fee would work an unreasonable hardship on the person on whom the fee is imposed. A request for waiver or refund of a fee shall be submitted in writing to the Environmental Protection Agency, Office of Pesticide Programs, Registration Division (7505C), Washington, DC 20460. A fee of $1,700 shall accompany every request for a waiver or refund, except that the fee under this sentence shall not be imposed on any person who has no financial interest in any action requested by such person under paragraphs (a) through (k) of this section. The fee for requesting a waiver or refund shall be refunded if the request is granted.

(n) All deposits and fees required by the regulations in this part shall be paid by money order, bank draft, or certified check drawn to the order of the Environmental Protection Agency. All

deposits and fees shall be forwarded to the Environmental Protection Agency, Headquarters Accounting Operations Branch, Office of Pesticide Programs (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. The payments should be specifically labeled ''Tolerance Petition Fees'' and should be accompanied only by a copy of the letter or petition requesting the tolerance. The actual letter or petition, along with supporting data, shall be forwarded within 30 days of payment to the Environmental Protection Agency, Office of Pesticide Programs, Registration Division, (7504C) Washington, DC 20460. A petition will not be accepted for processing until the required fees have been submitted. A petition for which a waiver of fees has been requested will not be accepted for processing until the fee has been waived or, if the waiver has been denied, the proper fee is submitted after notice of denial. A request for waiver or refund will not be accepted after scientific review has begun on a petition.

(o) This fee schedule will be changed annually by the same percentage as the percent change in the Federal General Schedule (GS) pay scale. In addition, processing costs and fees will periodically be reviewed and changes will be made to the schedule as necessary. When automatic adjustments are made based on the GS pay scale, the new fee schedule will be published in the **Federal Register** as a Final Rule to become effective 30 days or more after publication, as specified in the rule. When changes are made based on periodic reviews, the changes will be subject to public comment.

[FR Doc. 99–13191 Filed 5–25–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 268

[FRL–6346–2]

Land Disposal Restrictions: Site-Specific Treatment Variance to Chemical Waste Management, Inc.

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The United States Environmental Protection Agency (EPA or Agency) is today granting a site-specific treatment variance from the Land Disposal Restrictions (LDR) treatment standards for two selenium-bearing hazardous wastes. EPA is granting this variance because the chemical properties of these two wastes differ significantly from the waste used to establish the current LDR standard for selenium (5.7 mg/L TCLP) and Chemical Waste Management, Inc. (CWM) has adequately demonstrated that the two wastes cannot be treated to meet this treatment standard.

CWM intends to stabilize the wastes at their Kettleman City, California facility. Upon promulgation of this final rule, CWM may treat these two specific wastes to alternate treatment standards of 51 mg/L TCLP for the Owens-Brockway waste and 25 mg/L TCLP for the Ball-Foster waste. After treatment to these alternative selenium standards, CWM may dispose of the treated wastes in a RCRA Subtitle C landfill provided they meet the applicable LDR treatment standards for the other hazardous constituents in the wastes. We are granting this variance for three years.

DATES: This final rule is effective on May 11, 1999.

ADDRESSES: The official record for this rulemaking is identified by RCRA Docket Number F–1999–CWMF–FFFFF and is located at the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, it is recommended that the public make an appointment by calling (703) 603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15/page. The index and some supporting materials are available electronically. Follow these instructions to access the information electronically:

WWW: http://www.epa.gov/epaoswer/osw/hazwaste.htm#ldr

FTP: ftp.epa.gov

Login: anonymous

Password: your Internet address

Files are located in /pub/epaoswer.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at 800 424–9346 or TDD 800 553–7672 (hearing impaired). In the Washington, D.C., metropolitan area, call 703 412–9810 or TDD 703 412–3323. For more detailed information on specific aspects of this rulemaking, contact Josh Lewis at (703) 308–7877 or lewis.josh@epa.gov, or Elaine Eby at (703) 308–8449 or eby.elaine@epa.gov, Office of Solid Waste (5302 W), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

SUPPLEMENTARY INFORMATION:

I. Background

A. What Is the Basis for LDR Treatment Variances?

Under section 3004(m) of the Resource Conservation and Recovery Act (RCRA), EPA is required to set ''levels or methods of treatment, if any, which substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized.'' EPA interprets this language to authorize treatment standards based on the performance of best demonstrated available technology (BDAT). This interpretation was upheld by the D.C. Circuit in Hazardous Waste Treatment Council vs. EPA, 886 F. 2d 355 (D.C. Cir. 1989).

The Agency recognizes that there may be wastes that cannot be treated to levels specified in the regulations (see 40 CFR 268.40) because an individual waste matrix or concentration can be substantially more difficult to treat than those wastes the Agency evaluated in establishing the treatment standard (51 FR 40576, November 7, 1986). For such wastes, EPA has a process by which a generator or treater may seek a treatment variance. See 40 CFR 268.44. If granted, the terms of the variance establish an alternative treatment standard for the particular waste at issue.

B. What Is the Basis of the Current Selenium Treatment Standard?

In the Third rule (55 FR 22521, June 1, 1990), the Agency used performance data from the stabilization of a selenium D010 mineral processing waste, which we determined to be the most difficult to treat selenium waste, to set the national treatment standard for selenium. This waste contained up to 700 ppm total selenium and 3.74 mg/L selenium in the TCLP leachate. The resulting post-treatment selenium TCLP levels were between 1.80 and 0.154 mg/L TCLP, which led to our establishment of a national treatment standard of 5.7 mg/L for D010 selenium nonwastewaters. At that time, EPA also had information indicating that wastes containing high concentrations of selenium are rarely generated and land disposed and, therefore, concluded that the standard of 5.7 mg/L was achievable.

In the Phase IV final rule, the Agency determined that a treatment standard of 5.7 mg/L TCLP continued to be appropriate for D010 nonwastewaters (63 FR 28556, May 26, 1998). The Agency also changed the universal treatment standard (UTS) for selenium

nonwastewaters from 0.16 mg/L to 5.7 mg/L. In the preamble to the Phase IV final rule, we noted that we received comments from one company, CWM, indicating that it was attempting to stabilize selenium wastes with concentrations much higher than those EPA was examining to establish the national selenium standard. In response, we indicated that for these high-level selenium waste streams, we would propose a site-specific treatment variance, which we did on October 23, 1998 (63 FR 56886).

II. Basis for Today's Determination

A. What Does the CWM Petition Assert?

In their petition, CWM states that two companies, Owens Brockway and Ball-Foster, generate hazardous wastes with relatively high leachable selenium concentrations. CWM presents data showing that selenium TCLP concentrations in the untreated wastes are one to three orders of magnitude higher than the untreated mineral processing wastes that EPA used to develop the current D010 selenium treatment standard. The data also show that neither treated waste stream can reliably meet the numerical standard of 5.7 mg/L TCLP, even though CWM shows that it is using the treatment technology on which EPA based the selenium treatment standard.

Specifically, CWM's testing data consisted of bench-scale stabilization treatment testing for selenium-bearing wastes generated by Owens Brockway and Ball-Foster. Three samples of the Owens Brockway waste and one sample of the Ball Foster waste were tested to determine appropriate stabilization recipes. Selenium concentrations in the untreated Owens Brockway wastes were between 465 and 1024 mg/L TCLP, while the selenium concentration in the Ball-Foster waste was 59.8 mg/L TCLP. CWM submitted stabilization data from each facility using combinations of the following stabilization reagents: ferrous sulfate, calcium polysulfide, ferric chloride, sodium bisulfate, portland cement, and cement kiln dust. For more detailed information about this petition, see the proposed rule (63 *FR* 56886, October 23, 1998) and the docket supporting this proposal (docket number F–98–CWMP–FFFFF).

B. What Criteria Govern a Treatment Variance?

Under 40 CFR 268.44(h), EPA allows facilities to apply for a site-specific variance when a waste generated under conditions specific to only one site cannot be treated to the specified level(s). In such cases, the generator or treatment facility may apply to the Administrator, or EPA's delegated representative, for a site-specific variance from a treatment standard.

In 40 CFR 268.44(h)(1) and (2), EPA describes the two main cases in which we will grant a treatment variance. The case described in 40 CFR 268.44(h)(1) is applicable to this treatment variance, which addresses process wastes that are generated on a routine basis by two glass manufacturing companies. Basically, EPA must determine if the petitioner has adequately shown that, ''It is not physically possible to treat the waste to the level specified in the treatment standard . . . because the physical or the chemical properties of the waste differ significantly from the waste analyzed in developing the treatment standard. . . .''

C. What Is the Basis for EPA's Approval of CWM's Request for an Alternative D010 Treatment Standard?

After careful review of the data and petition submitted by CWM, we conclude that CWM has adequately demonstrated that the wastes satisfy the requirements for a treatment variance under 40 CFR 268.44(h)(1).

CWM has demonstrated that the two glass manufacturing waste streams differ significantly in chemical composition from the waste used to generate the original treatment standard. Selenium TCLP concentrations in the untreated wastes are one to three orders of magnitude higher than the waste used in developing the treatment standard for D010 hazardous wastes. Furthermore, CWM is using stabilization as the treatment technology, which is consistent with EPA's determination of BDAT, and the process is well-designed and operated.

Treatment of these two wastes is especially difficult because of the presence of other metals (i.e., arsenic, cadmium, chromium, and lead) above their respective characteristic levels. It is difficult, if not impossible, to optimize treatment for selenium when other metals are being treated because the selenium solubility curve differs from that of most other metals. Selenium's minimum solubility is at a neutral to mildly acidic pH (6.5–7.5) while other characteristic metals have a minimum solubility in the alkaline pH range (8–12) (see 62 FR 26045).

Therefore, EPA is today granting a site-specific variance from the D010 treatment standards for the two waste streams in question since the wastes cannot be physically treated to the level specified in the regulations. Today's alternative treatment standards will provide sufficient latitude for CWM to treat the other metals present in the wastes to LDR treatment standards and, by raising the selenium treatment standard, will avoid the difficulty posed by the different metal solubility curves.

D. What Are the Terms and Conditions of the Variance?

This variance applies to two specific waste streams: electrostatic precipitator dust generated during glass manufacturing operations at Owens Brockway Glass Container Company, and dry scrubber solid from glass manufacturing wastes at Ball-Foster Glass Container Corporation.

In analyzing the Owens Brockway data, the most effective stabilization recipe for this waste consists of 0.7 parts iron sulfate combined with 2.0 parts cement, resulting in a reagent to waste ratio of 2.7 to 1. For each of the three analytical trials submitted for the waste stream, this specific recipe achieved 36.8, 34.08, and 43.7 mg/L selenium TCLP in the treated waste. The treatment extract had a pH ranging from 10.5–11.9, which encompasses the maximum solubility (and, therefore, leaching potential) of selenium. This, in turn, suggests that use of the TCLP in this particular case adequately reflects a worst-case disposal scenario. (This is unlike the situation in Columbia Falls Aluminum Co. v. EPA, 139 F.3d 914, in which the TCLP testing did not reflect the post-treatment conditions). Using the BDAT methodology,[1] we calculated an alternative D010 standard of 51 mg/L TCLP.

For Ball-Foster's waste, the most effective treatment recipes have reagent to waste ratios of 1.8, 2.2, 2.3, 2.4, and 2.7. Selenium concentrations in the treated wastes were 11.6, 7.47, 8.22, 15.6, and 4.82 mg/L TCLP. The treatment extract pH ranged from 11.9–12.0, which again suggests that use of the TCLP adequately reflects the worst case disposal scenario. These treatment recipes are all consistent with the reagent to waste ratios used to establish the existing standard of 5.7 mg/L TCLP. Using these five data points, we calculated an alternative treatment D010 standard of 25 mg/L TCLP.

After treatment to these alternative selenium standards, CWM may dispose of the treated wastes in a RCRA Subtitle C landfill—since the waste still exhibits the toxicity characteristic—provided they meet all other applicable LDR treatment standards. We are granting this variance for three years for reasons discussed in Section IV below.

[1] BDAT Background Document for Quality Assurance/Quality Control Procedures and Methodology, October 23, 1991.

Although the alternative selenium standards for these two wastes are relatively high, this is a technically necessary compromise. As noted above and in the May 12, 1997 **Federal Register** (62 FR 26045), treatment cannot be optimized for both acid and base-soluble metals due to their different solubility curves. Because all of the other toxic metals (i.e., arsenic, cadmium, chromium, and lead) are being immobilized to meet their respective universal treatment standards, we consider, under the circumstances, that threats are being minimized if the alternative selenium treatment standards are met, as required by 3004(m).

Not only are all of the other toxic metals meeting their respective UTS standards, but the alternative selenium treatment standards essentially require CWM to use a well-designed and well-operated treatment system that is consistent, particularly in terms of the selection of reagents and reagent to waste ratios, with the technical basis for the current selenium treatment standard.

III. Response to Comments

The Agency received one comment on the proposed rule from a waste treatment company that treats metal-bearing hazardous wastes, including wastes contaminated with selenium. The commenter claims to have a reagent capable of stabilizing the wastes in question so that less selenium will leach out of the treated waste. The commenter submitted data showing that its reagent is successful in stabilizing wastes containing a variety of heavy metals, including selenium.

The commenter asked to perform a treatability study on the two wastes to verify whether a variance is necessary, and to determine whether a numerical treatment standard closer to the current regulatory level of 5.7 mg/L TCLP would be achievable.

We agreed that the commenter should conduct a treatability study. From December 1998 to February 1999, the commenter treated both of the glass manufacturing waste streams using its reagent. The commenter achieved selenium TCLP results ranging from 25.0–57.7 mg/L. These results are comparable to the alternative treatment standards in the proposed variance. However, we observe two significant points in the treatability study data:

(1) The commenter treated wastes that had significantly higher selenium concentrations than the wastes described in the proposed variance. The untreated Ball-Foster and Owens Brockway samples used in the treatability study had selenium concentrations of 2900 mg/L TCLP and 15,200 mg/L TCLP, respectively. The untreated wastes analyzed at the time of the proposed variance had concentrations of 60–1000 mg/L TCLP.

(2) The commenter's reagent achieved treatment levels similar to those we proposed, but with reagent to waste ratios of only 0.15–0.2 to 1. By comparison, the reagent to waste ratios used in the proposed rule were as high as 2.7 to 1.

Based on our review of the treatability study, we conclude that the wastes used in the treatability study represent the most difficult to treat Ball-Foster and Owens Brockway wastes, and that the proposed alternative treatment standards are still appropriate for these two waste streams. CWM also has indicated that the high concentration selenium wastes from the treatability study are not strictly one-time generated wastes, but rather are representative of the wastes that the two facilities generate from time to time. Therefore, we are finalizing the alternative treatment standards for the two waste streams as proposed. Both CWM and the commenter support our decision to finalize this variance at this time.

We note that, since this rule is approving a variance from a numerical treatment standard, CWM may use any reagent it chooses in meeting the alternative numerical standard. Finalization of this rule does not preclude CWM from using the commenter's reagent in stabilizing the two waste streams, which may be needed for any batches of higher selenium concentrations. The Agency notes that, to avoid questions of impermissible dilution, CWM will need to keep the reagent to waste ratios within acceptable bounds. No specific ratios are being established in today's rule because the Agency does not typically circumscribe a treater's flexibility in this manner. However, the Agency recommends that CWM use a reagent to waste ratio of 2.7 to 1 as a benchmark. This is the ratio used by the Agency in establishing today's alternative treatment standard.

IV. Reasons for the 3-Year Limitation

Because selenium is a non-renewable resource, and because the wastes in question contain high selenium concentrations, one potential avenue is that the selenium component could be recycled in an environmentally sound manner instead of being stabilized and landfilled. No secondary selenium recovery capacity currently exists in the U.S.[2] Further, the market for selenium appears to be declining, selenium prices are low, and a surplus foreign secondary capacity of selenium exists.[3] All of these factors suggest that development of an environmentally protective secondary selenium recovery system in the U.S. is not reasonably to be expected in the near future. That leaves stabilization as the best available treatment technology.

Over the next three years, EPA will determine whether this is still the case, and also whether new technologies (e.g., more effective stabilization reagents) have become available to treat these wastes to the national treatment level of 5.7 mg/L TCLP. CWM should expect to update us annually on the alternative treatment technologies it is investigating, and to submit any analytical data from studies using these alternative technologies. We will ask that CWM's submission also include information showing which stabilization recipe it is using to meet the alternative treatment standards, the selenium concentrations in untreated wastes, and the analytical results from these treated wastes. The Agency intends to use this information to determine if today's alternative treatment standards (or some other levels) are appropriate as a more permanent standard. Timely submittal of this information will allow us to begin any necessary rulemaking process as early as possible.

At the end of the three-year period, today's alternative treatment standards expire. Thus, if CWM has not found a new treatment technology to treat the two wastes to the national treatment level for D010 selenium wastes or if the Agency has not adopted more permanent alternative treatment standards for these two wastes, then CWM will have to submit a new petition to the Agency for a continuation of the current treatment variance, or a new treatment variance if a different alternative treatment standard is warranted.

V. Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether a regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may: (1) have an annual effect on the economy of $100

[2] ''Recycling-Metals.'' U.S. Geological Survey—Minerals Information—1997.

[3] *Id.*

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.

Because this rule does not create any new regulatory requirements, it is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review. Also, because this variance only changes the treatment standards applicable to two D010 waste streams at the Chemical Waste Management, Inc. facility in Kettleman City, California, and does not change in any way the paperwork requirements already applicable to these wastes, it does not affect requirements under the Paperwork Reduction Act.

B. Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies 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, any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates. Today's rule does not create a mandate on state, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13045

''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

Today's final rule is not subject to E.O. 13045 because it does not meet either of these criteria. The wastes described in this treatment variance will be treated by Chemical Waste Management, Inc., and then disposed of in a RCRA Subtitle C landfill, ensuring that there will be no risks that may disproportionately affect children.

D. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.'' Today's final rule does not significantly or uniquely affect the communities of Indian tribal governments. This rule issues a variance from the LDR treatment standards for two specific characteristic selenium wastes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. Executive Order 12898

EPA is committed to addressing environmental justice concerns and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all residents of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, or income bears disproportionately high and adverse human health and environmental impacts as a result of EPA's policies, programs, and activities, and that all people live in clean and sustainable communities. In response to Executive Order 12898 and to concerns voiced by many groups outside the Agency, EPA's Office of Solid Waste and Emergency Response formed an Environmental Justice Task Force to analyze the array of environmental justice issues specific to waste programs and to develop an overall strategy to identify and address these issues (OSWER Directive No. 9200.3–17). Today's variance applies to two D010 waste streams that will be treated by Chemical Waste Management, Inc. at their Kettleman City, California facility and disposed of in a RCRA Subtitle C landfill, ensuring protection to human health and the environment. Therefore, the Agency does not believe that today's rule will result in any disproportionately negative impacts on minority or low-income communities relative to affluent or non-minority communities.

F. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with

applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector, and it does not impose any Federal mandate on State, local, or tribal governments or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995. This rule also does not create new regulatory requirements; rather, it merely establishes alternative treatment standards for specific wastes that replace standards already in effect. EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA. For the same reasons, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments.

G. 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.

This treatment variance does not create any new regulatory requirements. Rather, it establishes alternative treatment standards for two specific wastes that replace standards already in effect, and it only applies to the CWM facility in Kettleman City, California. Therefore, I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. This rule, therefore, does not require a regulatory flexibility analysis.

H. National Technology Transfer and Advancement Act of 1995

As noted in the proposed rule, section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

I. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules (1) rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability, applying only to a particular waste at one facility under particular (and, as noted, exceptional) circumstances.

List of Subjects in 40 CFR Part 268

Environmental protection, Hazardous waste, Reporting and recordkeeping requirements.

Dated: May 11, 1999.

James R. Berlow,

Acting Director, Office of Solid Waste.

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

PART 268—LAND DISPOSAL RESTRICTIONS

1. The authority citation for part 268 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6924.

2. Section 268.44 is amended by adding two entries in alphabetical order and three footnotes to ''TABLE—WASTES EXCLUDED FROM THE TREATMENT STANDARDS UNDER § 268.40'' in paragraph (o) to read as follows:

§ 268.44 Variance from a treatment standard.

* * * * *

(o) * * *

WASTES EXCLUDED FROM THE TREATMENT STANDARDS UNDER § 268.40

Facility name [1] and address	Waste code	See also	Regulated hazardous constituent	Wastewaters		Nonwastewaters	
				Concentration (mg/L TCLP)	Notes	Concentration (mg/L TCLP)	Notes
Ball-Foster Glass Container Corporation, El Monte, CA [6],[7].	D010	Table CCWE in 268.40.	Selenium	NA	NA	25	NA

WASTES EXCLUDED FROM THE TREATMENT STANDARDS UNDER § 268.40—Continued

Facility name [1] and address	Waste code	See also	Regulated hazardous constituent	Wastewaters		Nonwastewaters	
				Concentration (mg/L TCLP)	Notes	Concentration (mg/L TCLP)	Notes
*	*	*	*	*	*	*	
Owens Brockway Glass Container Company, Vernon, CA [5],[7].	D010	Table CCWE in 268.40.	Selenium	NA	NA	51	NA

[1] A facility may certify compliance with these treatment standards according to provisions in 40 CFR 268.7.
* * * * * * *
[5] Alternative D010 selenium standard only applies to dry scrubber solid from glass manufacturing wastes.
[6] Alternative D010 selenium standard only applies to electrostatic precipitator dust generated during glass manufacturing operations.
[7] D010 wastes generated by these two facilities are subject to the following conditions: (a) the wastes must be treated by Chemical Waste Management, Inc. at their Kettleman Hills facility in Kettleman City, California; and (b) this treatment variance will be valid until May 11, 2002.

NOTE: NA means Not Applicable.

[FR Doc. 99–12945 Filed 5–25–99; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF62

Endangered and Threatened Wildlife and Plants; Threatened Status for Johnson's Seagrass

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service (Service) is adding Johnson's seagrass (*Halophila johnsonii*) to the List of Endangered and Threatened Plants (List) as a threatened species in accordance with the Endangered Species Act of 1973, as amended (Act). This amendment to the List is based on a determination by the National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, Department of Commerce, which has jurisdiction for this species, published on September 14, 1998, in the **Federal Register** (63 FR 49035).

DATES: The effective date of this action is May 26, 1999.

FOR FURTHER INFORMATION CONTACT: Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Mail Stop 452, Arlington, Virginia 22203 (703/358–2171).

SUPPLEMENTARY INFORMATION: The Act is administered jointly by the Service and NMFS. In accordance with a Memorandum of Understanding between the Service and NMFS regarding jurisdictional responsibilities and listing procedures under the Act signed on August 28, 1974, the agencies agreed that NMFS would assume jurisdiction for the Johnson's seagrass. Under section 4(a)(2) of the Act, NMFS must decide whether a species under its jurisdiction should be classified as endangered or threatened. The Service is responsible for the actual amendment of the List in 50 CFR 17.12(h).

NMFS published a proposed rule to list Johnson's seagrass as a threatened species on September 15, 1993 (58 FR 48326). In the proposed rule, NMFS solicited comments from peer reviewers, the public, and all other interested parties. NMFS held a public hearing on the proposed listing in Vero Beach, Florida, on September 20, 1994. NMFS reopened the comment period for the proposed listing on April 20, 1998 (63 FR 19468).

On September 14, 1998, NMFS published a final rule to list Johnson's seagrass as threatened (63 FR 49035). In the final rule, NMFS addressed the comments received in response to the proposed rule. Because NMFS provided public comment periods on the proposed rule, and because this action of the Service to amend the List in accordance with the determination by NMFS is nondiscretionary and administrative in nature, the Service has omitted the notice and public comment procedures of 5 U.S.C. 553(b) for this action.

National Environmental Policy Act

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

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Export, Import, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

PART 17—[AMENDED]

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

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

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

2. The Service amends section 17.12(h) by adding the following, in alphabetical order under FLOWERING PLANTS, to the List of Endangered and Threatened Plants:

Species		Historic range	Family name	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*	*	*	
Halophila johnsonii ..	Johnson's seagrass	U.S.A. (FL)	Hydrocharitaceae ...	T	663	NA	NA

Species		Historic range	Family name	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
*	*	*	*	*	*		*

Dated: May 17, 1999.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 99–13251 Filed 5–25–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AE52

Endangered and Threatened Wildlife and Plants; Threatened Status for the Plant Thelypodium howellii ssp. spectabilis (Howell's spectacular thelypody)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service) determine threatened status pursuant to the Endangered Species Act of 1973, as amended (Act), for *Thelypodium howellii* ssp. *spectabilis* (Howell's spectacular thelypody). *Thelypodium howellii* ssp. *spectabilis* is known from 11 sites in Baker and Union counties, Oregon. This taxon is threatened by a variety of factors including habitat destruction and fragmentation from agricultural and urban development, grazing by domestic livestock, competition from non-native vegetation, and alterations of wetland hydrology. This rule implements the Federal protection and recovery provisions afforded by the Act for the plant.

EFFECTIVE DATE: June 25, 1999.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Snake River Basin Office, 1387 S. Vinnell Way, Room 368, Boise, Idaho 83709.

FOR FURTHER INFORMATION CONTACT: Robert Ruesink, Field Supervisor (see **ADDRESSES** section) (telephone 208/378–5243; facsimile 208/378–5262).

SUPPLEMENTARY INFORMATION:

Background

Thelypodium howellii ssp. *spectabilis* is a herbaceous biennial that occurs in moist, alkaline meadow habitats at approximately 1,000 meters (m) (3,000 feet (ft)) to 1,100 m (3,500 ft) elevation in northeast Oregon. The plant is currently known from 11 sites (5 populations) ranging in size from 0.01 hectares (ha) (0.03 acres (ac)) to 16.8 ha (41.4 ac) in the Baker-Powder River valley in Baker and Union counties. The total occupied habitat for this species is approximately 40 ha (100 ac). Plants at the type locality in Malheur County have not been relocated since 1927 and are considered to be extirpated (Kagan 1986). The entire extant range of this taxon lies within a 21 kilometer (km) (13 mile (mi)) radius of Haines, Oregon.

Due to its relatively low elevation and rich soils, agriculture is the primary land use in the Baker-Powder River Valley region, which contains the 11 extant *T. howellii* ssp. *spectabilis* sites. The region is bordered on the west by the Elkhorn Mountains and on the east by the Wallowa Mountains (Kagan 1986). Annual precipitation for the Baker Valley averages 27 centimeters (cm) (10.6 inches (in)), most falling as snow in winter. Weather patterns follow the interior continental weather systems with little maritime influence. Winters are cold, and summers are warm and dry (Larkin and Salzer 1992).

Thelypodium howellii ssp. *spectabilis* grows to approximately 60 cm (2 ft) tall, with branches arising from near the base of the stem. The basal leaves are approximately 5 cm (2 in) long with wavy edges and are arranged in a rosette. Stem leaves are shorter, narrow, and have smooth edges. Flowers appear in loose spikes at the ends of the stems. Flowers have four purple petals approximately 1.9 cm (0.75 in) in length, each of which is borne on a short (0.6 cm (0.25 in)) stalk. Fruits are long, slender pods (Greenleaf 1980, Kagan 1986).

This taxon was thought to be extinct until rediscovered by Kagan in 1980 near North Powder (Kagan 1986). The 11 recently discovered sites containing *T. howellii* ssp. *spectabilis* are located near the communities of North Powder, Haines, and Baker. The North Powder *T. howellii* ssp. *spectabilis* population contains five sites; the largest is subject to a conservation easement (16.8 ha (41.4 ac)). Until recently, one site near the town of North Powder, less than 0.8 ha (2.3 ac) in size, had a plant protection agreement between the landowner and The Nature Conservancy. The Haines plant population currently consists of three small sites located in or near the town of Haines. Since the publication of the proposed rule, an additional site in Haines was identified (B. Russell, consultant, *in litt.* 1998) and one previously known site in Haines was apparently extirpated by development (P. Brooks, Forest Service, *in litt.* 1998). A 0.7 ha (1.8 ac) site west of Baker is within a 8 ha (20 ac) pasture adjacent to a road. Another site north of Baker (0.03 ha (0.08 ac)) exists in a small remnant of meadow habitat surrounded by farmland. One site approximately 8 km (5 mi) north of North Powder is located on private land at Clover Creek (Kagan 1986, Oregon Natural Heritage Program (ONHP) 1998).

Thelypodium howellii var. *spectabilis* was first described by Peck in 1932 (Peck 1932) from a specimen collected in 1927 near Ironside, Oregon (Malheur County). In 1973, Al-Shehbaz revised the genus and elevated the variety to subspecies status (Al-Shehbaz 1973). This taxon has larger petals than *T. howellii* ssp. *howellii*, and the paired filaments are not united (Al-Shehbaz 1973, Kagan 1986, Antell 1990). In addition, although both taxa occur in eastern Oregon, their habitats do not overlap (Kagan 1986). For purposes of this final rule, *T. howellii* ssp. *spectabilis* is recognized as a subspecies because of the taxonomic distinction made in 1973 (Al-Shehbaz 1973), although the plant was treated as a variety in the candidate assessment process (see ''Previous Federal Action'' section).

Thelypodium howellii ssp. *spectabilis* occurs in wet alkaline meadows in valley bottoms, usually in and around woody shrubs that dominate the habitat on the knolls and along the edge of the wet meadow habitat between the knolls. Associated species include *Sarcobatus vermiculatus* (greasewood), *Distichlis stricta* (alkali saltgrass), *Elymus cinereus* (giant wild rye), *Spartina gracilis* (alkali cordgrass), and *Poa juncifolia* (alkali bluegrass) (Kagan 1986). Soils are pluvial-deposited alkaline clays mixed with recent alluvial silts, and are moderately well-drained (Kagan 1986).

Thelypodium howellii ssp. *spectabilis* may be dependent on periodic flooding since it appears to rapidly colonize areas adjacent to streams that have flooded (Kagan 1986). In addition, this taxon does not compete well with

encroaching weedy vegetation such as *Dipsacus sylvestris* (teasel) (Davis and Youtie 1995).

Previous Federal Action

Federal government actions for the plant began as a result of section 12 of the Endangered Species Act of 1973, (Act) as amended (16 U.S.C. 1531 *et seq.*), which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct in the United States. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975, and included *Thelypodium howellii* var. *spectabilis* as a threatened species. We published a notice in the July 1, 1975, **Federal Register** (40 FR 27823) of our acceptance of the Smithsonian Institution report as a petition within the context of section 4(c)(2) (petition provisions are now found in section 4(b)(3) of the Act) and our intention thereby to review the status of the plant taxa named therein. The July 1, 1975, notice included the above taxon. On June 16, 1976, we published a proposal (41 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to section 4 of the Act. The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication. *Thelypodium howellii* var. *spectabilis* was not included in the June 16, 1976, **Federal Register** document.

We published an updated notice of review for plants on December 15, 1980 (45 FR 82480). This notice included *Thelypodium howellii* var. *spectabilis* as a category 1 candidate. Category 1 candidates were those for which the Service had sufficient information on biological vulnerability and threats to support proposals to list them as endangered or threatened species. This designation for *T. howellii* var. *spectabilis* was retained in the November 28, 1983, supplement to the Notice of Review (48 FR 53640), as well as subsequent revisions on September 27, 1985 (50 FR 39526), February 21, 1990 (55 FR 6184), and September 30, 1993 (50 FR 51143). Upon publication of the February 28, 1996 Notice of Review (61 FR 7596), we ceased using category designations and included *T. howellii* var. *spectabilis* as a candidate species. Candidate species are those for which the Service has on file sufficient information on biological vulnerability and threats to support proposals to list the species as threatened or endangered.

Section 4(b)(3)(B) of the Act requires the Secretary to make findings on pending petitions that present substantial information indicating the petitioned action may be warranted within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the case for *Thelypodium howellii* var. *spectabilis*, because the 1975 Smithsonian report had been accepted as a petition. On October 13, 1983, we found that the petitioned listing of the species was warranted, but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act; notification of this finding was published on January 20, 1984 (49 FR 2485). Such a finding requires us to consider the petition as having been resubmitted, pursuant to section 4(b)(3)(C)(I) of the Act. The finding was reviewed annually in October of 1983 through 1996.

On January 13, 1998 (63 FR 1948), we published a proposal to list *Thelypodium howellii* ssp. *spectabilis* as a threatened species. We now determine *T. howellii* ssp. *spectabilis* to be a threatened species with the publication of this final rule.

The processing of this final rule conforms with our Listing Priority Guidance published in the **Federal Register** on May 8, 1998 (63 FR 25502). The guidance clarifies the order in which we will process rulemakings. Highest priority is processing emergency listing rules for any species determined to face a significant and imminent risk to its well being (Tier 1). Second priority (Tier 2) is processing final determinations on proposed additions to the lists of endangered and threatened wildlife and plants; the processing of new proposals to add species to the lists; the processing of administrative petition findings to add species to the lists, delist species, or reclassify listed species (petitions filed under section 4 of the Act); and a limited number of delisting and reclassifying actions. Processing of proposed or final designations of critical habitat is accorded the lowest priority (Tier 3). This final rule is a Tier 2 action and is being completed in accordance with the current Listing Priority Guidance. We have updated this rule to reflect any changes in information concerning distribution, status and threats since the publication of the proposed rule.

Summary of Comments and Recommendations

In the January 13, 1998, proposed rule (63 FR 1948) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. The comment period was approximately three months long and closed on April 20, 1998. Appropriate State agencies, County governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A request for a public hearing was received from Rod Dowse of the Oregon Cattlemen's Association. On March 5, 1998, we published a notice in the **Federal Register** (63 FR 10817) announcing the public hearing and the extension of the public comment period until April 20, 1998. A notice announcing the public hearing and proposal was published in the Baker City Herald on February 24, 1998. We conducted a public hearing on April 9, 1998, at the Geiser Grand Hotel in Baker City, Oregon. Testimony was taken from 6 p.m. to 8 p.m. Four parties provided testimony.

During the public comment period, we received written and oral comments from ten parties. Four commenters expressed support for the listing proposal, three commenters opposed the proposal, and three were neutral. Written comments and oral statements obtained during the public hearing and comment period are combined in the following discussion. Opposing comments and other comments questioning the rule were organized into specific issues. These issues and our response to each are summarized as follows:

Issue 1: The Service should conduct additional surveys for *Thelypodium howellii* ssp. *spectabilis* in Baker, Union, and Malheur counties to clarify its distribution and abundance. A few commenters believed that *T. howellii* ssp. *spectabilis* may be more widespread, and that further surveys were needed before listing.

Service response: We used information provided by the Oregon Natural Heritage Program and other knowledgeable botanists to evaluate the status of *T. howellii* ssp. *spectabilis.* Information from botanical collections that date from the 1920's was also utilized in the preparation of the proposed rule. The type locality in Malheur County has been resurveyed by numerous botanists over the past two decades, and *T. howellii* ssp. *spectabilis* has not been relocated. Recent surveys in Malheur County conducted by staff

from the Service (E. Rey-Vizgirdas, Service botanist, *in litt.* 1998) and Bureau of Land Management (J. Findlay, Bureau of Land Management, pers. comm. 1998) have also failed to locate additional sites or populations.

Only one commenter provided information on a *T. howellii* ssp. *spectabilis* site that was not specifically mentioned in the proposed rule (B. Russell, *in litt.* 1998). This site, located on private land in Haines, Oregon, is within ½ mile of other sites containing this species and is subject to similar threats as the populations discussed in the proposed rule. Although *T. howellii* ssp. *spectabilis* populations vary in size from year to year and new populations may be found in the future, similar threats are likely to apply to any newly discovered populations. In summary, no data were provided to substantiate the claim that *T. howellii* ssp. *spectabilis* is more widespread than previously described in the proposed rule.

Issue 2: Several commenters believed that more information was needed on the life history of *T. howellii* ssp. *spectabilis.* Some asked for further clarification on its habitat and growth requirements. One commenter claimed that this taxon may be a weed, similar to other noxious weeds in the mustard family. Another asked whether *T. howellii* ssp. *spectabilis* could be transplanted or propagated.

Service response: Although several widespread members of the mustard family such as whitetop (*Cardaria draba*), blue mustard (*Chorispora tenella*), and tumble mustard (*Sisymbrium altissimum*) are considered to be noxious weeds, no species of *Thelypodium* are known to be noxious weeds in the western United States (Whitson *et al.* 1996).

In some cases, transplanting or propagating rare plants is essential to recovery. However, we believe that the protection of existing habitat for *T. howellii* ssp. *spectabilis* is critical to the long-term conservation of this species. We will consider the feasibility of propagating individuals or establishing additional populations of *T. howellii* ssp. *spectabilis* during the development of a recovery plan for this species. Additional information on the life history and growth requirements of *T. howellii* ssp. *spectabilis* also will be gathered during the recovery process.

Issue 3: Several commenters questioned the effects of activities such as grazing, altered hydrology, and agriculture on *T. howellii* ssp. *spectabilis.* One commenter wondered if other plant species have outcompeted *T. howellii* ssp. *spectabilis* in areas where hydrologic conditions have changed. Another commenter stated that habitat for *T. howellii* ssp. *spectabilis* has been highly altered by changes in natural wetland hydrology, and that such hydrologic changes may not be restorable. A few commenters stated that disturbance may actually be beneficial for *T. howellii* ssp. *spectabilis.* One commenter believed that grazing management is appropriate for habitat conditions in eastern Oregon, and that grazing is not a threat to *T. howellii* ssp. *spectabilis.* In addition, the effects of livestock on this taxon are not well known. Some commenters stated that *T. howellii* ssp. *spectabilis* is not threatened by agriculture because it occurs on land not suitable for farming.

Service response: Only one population of *T. howellii* ssp. *spectabilis* occurs on land that may be managed for the long-term protection of this species (a permanent conservation easement on private land near North Powder, Oregon). All remaining *T. howellii* ssp. *spectabilis* sites in Baker and Union counties are subject to a variety of threats including development, road construction projects and maintenance, trampling, recreational activities, and the invasion of exotic plant species.

The Service agrees that appropriate grazing management may be suitable for maintaining general habitat conditions and forage species in Baker and Union counties. However, the impact of livestock grazing on rare plant species is influenced by factors including the season and magnitude of grazing. In some cases, grazing effects can be neutral or even beneficial if grazing is managed to minimize impacts such as trampling or compaction. As described in the ''Summary of Factors Affecting the Species'' section, we believe that grazing of *T. howellii* ssp. *spectabilis* during the active growing season can adversely impact the reproduction of this species. Reproduction by seed is necessary for the survival of annual and biennial plant species such as *T. howellii* ssp. *spectabilis.* Because *T. howellii* ssp. *spectabilis* is palatable to livestock, grazing in occupied habitat prior to seed maturation and dispersal can result in lower seed set and fewer seedlings of *T. howellii* ssp. *spectabilis.*

Changes in hydrology or soil conditions often result in changes in the abundance and distribution of plant species. At several sites containing *T. howellii* ssp. *spectabilis* near Baker City and North Powder, *T. howellii* ssp. *spectabilis* plants are located adjacent to, but not within areas dominated by wetland plant species such as cattails (*Typha* spp.), sedges (*Carex* spp.), water hemlock (*Cicuta douglasii*), and teasel (*Dipsacus sylvestris*). Although it is not known whether these species have actually displaced *T. howellii* ssp. *spectabilis*, it is unlikely that *T. howellii* ssp. *spectabilis* can persist in areas where the hydrologic conditions are not favorable or in areas dominated by exotic species.

Although remaining sites supporting *T. howellii* ssp. *spectabilis* may not be directly threatened by agricultural conversion, indirect effects of agriculture include habitat fragmentation, changes in local hydrologic conditions, and the use of herbicides and pesticides (which may impact pollinator populations). Because all known *T. howellii* ssp. *spectabilis* sites have been invaded at least to some extent by noxious weeds such as teasel and thistles (*Cirsium* spp.). As a result, *T. howellii* ssp. *spectabilis* is particularly vulnerable to herbicide use.

Issue 4: One commenter questioned the accuracy of population data for *T. howellii* ssp. *spectabilis* presented in the proposed rule, and further believed that information based on ''ocular estimates'' of population size should not be used.

Service response: We acknowledge that careful collection of population data (e.g., numbers of plants and population trends) can be useful to identify problems such as poor reproduction and lack of recruitment of new individuals into the population. However, like most annual plants, the population size of biennial plant species such as *T. howellii* ssp. *spectabilis* can vary greatly from year to year. We do not rely solely on population information, but consider threats to the species as outlined under the ''Summary of Factors Affecting the Species'' section of all proposed and final listing rules. These factors are discussed in detail for this species in the ''Summary of Factors Affecting the Species'' section of this final rule.

Issue 5: One commenter felt that *T. howellii* ssp. *spectabilis* should be listed as endangered rather than threatened due to the limited number of sites and threats to its habitat, and believed that *T. howellii* ssp. *spectabilis* is not likely to persist in small habitat areas. Another commenter stated that although the population of *T. howellii* ssp. *spectabilis* fluctuates from year to year, eight *T. howellii* ssp. *spectabilis* sites that have been monitored since the 1980's appear to be declining. Two commenters provided information about a proposed race track development project near Haines, stating that this project, if implemented, could damage habitat for *T. howellii* ssp. *spectabilis*, and that the land may be zoned for industrial purposes. One commenter provided information on a population of *T.*

howellii ssp. *spectabilis* in Haines that occurs directly adjacent to a proposed highway improvement project. This commenter further stated that, as of June 1997, at least two lots in Haines that contained *T. howellii* ssp. *spectabilis* were for sale.

Service response: We acknowledge that *T. howellii* ssp. *spectabilis* sites located within or adjacent to the City of Haines are threatened by isolation, development, and other activities, as described in the ''Summary of Factors Affecting the Species'' section.

However, we believe that the site supporting the largest habitat area (located near North Powder) can be managed for the long-term protection of this species. In addition, at least three other sites containing *T. howellii* ssp. *spectabilis* (including the second largest habitat area at Clover Creek) are not currently threatened by development. We will continue to work with willing landowners and State, local, and Federal agencies to ensure that grazing and other activities are managed to reduce impacts to this species and its habitat. The species is not in imminent danger of extinction. Thus, the listing as threatened rather than endangered is appropriate.

Issue 6: One commenter stated that *T. howellii* ssp. *spectabilis* should not be listed because economic impacts have not been considered.

Service response: In accordance with 16 U.S.C., paragraph 1533 (b)(1)(A), 50 CFR 424.11(b), and section 4(b)(1)(A) of the Act, listing decisions are made solely on the basis of the best available scientific and commercial data. Economic impacts cannot be considered when determining whether to list a species under the Act.

Issue 7: One commenter stated that the Service should not list *T. howellii* ssp. *spectabilis* because it has no authority to list or regulate species under the Act that are not involved in interstate commerce. This commenter further believed that Federal listing for *T. howellii* ssp. *spectabilis* is unnecessary since it would not confer greater protection for this species than Oregon's Endangered Species Act already provides.

Service response: The Federal government has the authority under the Commerce Clause of the U.S. Constitution to protect this species for the reasons given in Judge Wald's opinion and Judge Henderson's concurring opinion in *National Association of Home Builders* v. *Babbitt,* 130 F.3d 1041 (D.C. Cir. 1997), *cert. denied,* 1185 S. Ct. 2340 (1998). That case involved a challenge to application of the Act prohibitions to protect the listed Delhi Sands flower-loving fly. As with *T. howellii* ssp. *spectabilis,* the Delhi Sands flower-loving fly is endemic to only one state. Judge Wald held that application of the Act's prohibitions against taking of endangered species to this fly was a proper exercise of Commerce Clause power to regulate: (1) use of channels of interstate commerce; and (2) activities substantially affecting interstate commerce because it prevented loss of biodiversity and destructive interstate competition. Judge Henderson upheld protection of the fly because doing so prevents harm to the development that is part of interstate commerce.

We believe that the Federal government has the authority under the Property Clause of the Constitution to protect this species. While *T. howellii* ssp. *spectabilis* is not known to occur on Federal land, it is clear that the species is part of an ecosystem that includes Federal lands. Baker and Union counties contain a significant amount of Federal land administered by the U.S. Forest Service and the Bureau of Land Management. Native species such as mule deer range widely across these lands, and are known to graze on *T. howellii* ssp. *spectabilis* . The courts have long recognized Federal authority under the Property Clause to protect Federal resources in such circumstances. See, e.g., *Kleppe* v. *New Mexico,* 429 U.S. 873 (1976); *United States* v. *Alford,* 274 U.S. 264 (1927); *Camfield* v. *United States,* 167 U.S. 518 (1897); *United States* v. *Lindsey,* 595 F.2d 5 (9th Cir. 1979).

As for whether Federal listing of *T. howellii* ssp. *spectabilis* would confer more protection than is already provided under Oregon law, the inadequacy of the State law is discussed below in Section D of the ''Summary of Factors Affecting the Species'' section of this rule.

Peer Review

In accordance with interagency policy published on July 1, 1994 (59 FR 34270), we solicited the expert opinions of three independent specialists regarding pertinent scientific or commercial data and assumptions relating to the taxonomy, population status, and supportive biological and ecological information for the taxon under consideration for listing. The purpose of such review is to ensure that listing decisions are based on scientifically sound data, assumptions, and analyses, including input of appropriate experts and specialists. Two scientists responded to our request for peer review of this listing action. Both responders provided information which supported the biological and ecological data presented in the proposed rule.

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act (16 U.S.C. 1533) and regulations (50 CFR part 424) that implement the listing provisions of the Act established the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Thelypodium howellii* ssp. *spectabilis* are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range.

Most of the habitat for *T. howellii* ssp. *spectabilis* has been modified or lost to urban and agricultural development. Habitat degradation at all remaining sites for this species is due to a combination of livestock grazing, agricultural conversion, hydrological modifications, and competition from non-native vegetation (see Factor E). These activities have resulted in the extirpation of *T. howellii* ssp. *spectabilis* from about half its former range in Baker, Union, and Malheur counties. Plants at the type locality in Malheur County are considered to be extirpated due to past agricultural development (Kagan 1986, ONHP 1998). Since 1990, at least 40 percent of the sites sampled in North Powder that previously contained *T. howellii* ssp. *spectabilis* have been extirpated (A. Robinson, Service botanist, *in litt.* 1996). These sites were all located within areas subjected to grazing. Grazing, trampling, exotic species, and agricultural activities continue to threaten virtually all remaining habitat for this species (Table 1).

TABLE 1.—SUMMARY OF THREATS

Site (Population)	Hectares (Acres)	Number plants	Ownership	Threats
Clover Creek	15.9 (39.2)	300 (Kagan 1986)	Private	Livestock grazing, herbicides.
North Powder 2 (North Powder)	0.9 (2.3)	16,000 (Salzer, *in litt.* 1996).	Private	Non-native vegetation.
Miles easement (North Powder)	16.8 (41.4)	Greater than 2,500 (Robinson, *in litt.* 1996).	Private (conserv. easement).	Livestock grazing, hydrologic modifications.
Hot Creek east of I–85 (North Powder)	0.24 (0.59)	12 (Kagan, pers. comm., 1995).	Private (ODOT [1])	Naturally occurring events.
Hot Creek North (North Powder)	0.01 (0.03)	10 (Robinson, *in litt.* 1996).	Private	Livestock grazing, naturally occurring events.
Powder River (North Powder)	0.03 (0.07)	100 (Robinson, *in litt.* 1996).	Private (ODOT [1])	Livestock grazing.
Haines rodeo (Haines)	4.3 (10.6)	June 1998: 10,000; July 1998: 300 (E. Rey-Vizgirdas, *in litt.* 1998).	Private (ODOT [1])	Urbanization, mowing.
Haines water tower (Haines)	0.4 (1.0)	200 to 300 (E. Rey-Vizgirdas, *in litt.* 1998).	Unknown (private)	Urbanization.
Haines west (Haines)	Not available	Not available	Private	Urbanization, road construction, herbicides.
Haines 4th and Olson (Haines)	0.1 (0.3)	700 to 800 (E. Rey-Vizgirdas, *in litt.* 1998).	Private	Possibly extirpated (Brooks, *in litt.* 1998)
Baker City North	0.03 (0.08)	40 (Kagan, pers. comm., 1995).	Private	Agricultural conversion, herbicides.
Pocahontas Road	0.7 (1.8)	250 to 300 (E. Rey-Vizgirdas, *in litt.* 1998).	Private	Livestock grazing, nonnative vegetation.

[1] Oregon Department of Transportation Easement.

Within the City of Haines, all remaining habitat containing *T. howellii* ssp. *spectabilis* is being impacted by residential construction, trampling, and other activities. In 1994, a large section of habitat formerly occupied by *T. howellii* ssp. *spectabilis* at the Haines rodeo grounds was destroyed when a parking lot was constructed. Although an estimated 5,000 to 10,000 *T. howellii* ssp. *spectabilis* plants were present at the Haines rodeo grounds in late June 1998, the majority of this population was subsequently impacted by the July 4 and 5 rodeo; the site was apparently mowed and used as a parking area during the rodeo (E. Rey-Vizgirdas, *in litt.* 1998). Immediately after the rodeo, fewer than 300 *T. howellii* ssp. *spectabilis* plants were observed at the site. Most of these plants were found along the fence line adjacent to the main road (outside the rodeo grounds). It is possible that the *T. howellii* ssp. *spectabilis* population may recover from this disturbance. However, it is unlikely that the entire population was able to reproduce successfully prior to mowing since most plants were in full bloom (without mature fruits) in late June (E. Rey-Vizgirdas, *in litt.* 1998).

T. howellii ssp. *spectabilis* habitat within a proposed racing area development project adjacent to the rodeo grounds, will likely be impacted by the proposed project. However, since no specific *T. howellii* ssp. *spectabilis* surveys have been completed for this project, it is unclear how many *T. howellii* ssp. *spectabilis* plants will be affected.

Another *T. howellii* ssp. *spectabilis* site in Haines, which contained approximately 800 plants in June 1998 (E. Rey-Vizgirdas, *in litt.* 1998), apparently was subsequently extirpated by residential development (P. Brooks, *in litt.* 1998). Urbanization represents a major threat for this species within the city limits of Haines.

Thelypodium howellii ssp. *spectabilis* is threatened by changes in hydrology related primarily to historic and current land uses such as agricultural conversion and flood control. Modifying the intensity and frequency of flooding events and soil moisture levels can significantly alter plant habitat suitability. If moisture levels stay high later in the spring or summer, species such as sedges and rushes will outcompete *T. howellii* ssp. *spectabilis*; if the soil becomes too saline, *Distichlis* will outgrow *T. howellii* ssp. *spectabilis* (Davis and Youtie 1995). Irrigation practices in the vicinity of *T. howellii* ssp. *spectabilis* habitat tend to increase soil moisture levels and can also increase soil salinity (Davis and Youtie 1995), making the habitat less suitable for this plant. Hydrological modifications occurred in at least two sites containing this taxon in the vicinity of North Powder (Davis and Youtie 1995; Robinson, *in litt.* 1996). In addition, it is likely that natural hydrologic processes have been altered at all of the existing sites due to surrounding land uses including agriculture and residential/urban development.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The plant is not a source for human food or of commercial horticulture interest. Therefore, this is not a factor considered in the listing decision at this time.

C. Disease or Predation

Thelypodium howellii ssp. *spectabilis* is palatable to livestock (Kagan 1986, Davis and Youtie 1995). Cattle directly consume and trample individual plants (Kagan 1986). Native herbivores (e.g. deer (*Odocoileus*) and elk (*Cervus*)) likely consume *T. howellii* ssp. *spectabilis* plants; however, there is little evidence to suggest that herbivory by native ungulates currently poses a significant threat to this taxon (Kagan 1986).

Livestock grazing can negatively impact habitat and contribute to reduced reproduction of this species (Kagan 1986). In particular, spring and early summer grazing adversely affects reproduction for *T. howellii* ssp. *spectabilis* by removing flowers and/or

fruits, and individual plants get trampled during the period of active growth (generally from May through July).

In July 1995, Berta Youtie (plant ecologist, The Nature Conservancy) and Andrew Robinson (Service botanist, Oregon State Office) found that cattle had consumed all *T. howellii* ssp. *spectabilis* plants that were present within a pasture at Clover Creek; plants were only observed in an adjacent area that was not subject to grazing. The Clover Creek site (15.9 ha (39.2 ac)) supports the second largest remaining plant habitat area.

At another site intentionally not grazed for the last five years, *T. howellii* ssp. *spectabilis* plants have expanded into areas previously unoccupied. Areas that were previously heavily grazed now contain higher densities and larger plants than marginal refugia habitat beneath *Sarcobatus* (Robinson, *in litt.* 1996). However, this site, while under a permanent conservation easement, has been subjected to trespass grazing on at least two occasions during the past three years (A. Robinson, pers. comm., 1997).

D. The Inadequacy of Existing Regulatory Mechanisms

Thelypodium howellii ssp. *spectabilis* is listed as endangered by the State of Oregon (Oregon Department of Agriculture). However, the State Endangered Species Act does not provide protection for species on private land. Therefore, under State law, in such cases, any plant protection is at the discretion of the landowner.

The Oregon Department of Transportation (ODOT) currently considers potential impacts to *T. howellii* ssp. *spectabilis* in their road maintenance activities where it occurs at three sites that are partially within ODOT rights-of-way. However, two of these sites are less than 0.4 ha (1 ac) in size, and the third site (at Haines rodeo ground) is threatened by activities that are not controlled by ODOT.

Thelypodium howellii ssp. *spectabilis* could potentially be affected by projects requiring a permit under section 404 of the Clean Water Act. Under section 404, the U.S. Army Corps of Engineers (Corps) regulates the discharge of fill material into waters of the United States including navigable and isolated water bodies, headwaters, and adjacent wetlands. Section 404 regulations require applicants to obtain an individual permit to place fill for projects affecting greater than 4 ha (10 ac) of waters of the U.S. Projects can qualify for authorization under Nationwide Permit 26 (NWP 26) if the discharge does not cause the loss of more than three acres of waters of the U.S. nor cause the loss of waters of the U.S. for a distance greater than 500 linear feet of stream bed. Projects that qualify for authorization under NWP 26 may proceed without prior notification to the Corps if the discharge would cause the loss of less than ⅓ of an acre of waters of the U.S. (33 CFR 330. App. A 26b.). Evaluation of impacts of such projects by the resource agencies through the section 404 process is thus not an option. Corps Division and District Engineers may require that an individual section 404 permit be obtained if projects otherwise qualifying under NWP 26 would cause greater than minimal individual or cumulative environmental impacts. Corps regulations implementing the Clean Water Act require withholding authorization under NWP 26 if the existence of a listed endangered or threatened species would be jeopardized, regardless of the significance of the affected wetland resources (33 CFR 330.4 (f)).

The Oregon Department of Fish and Wildlife (ODFW) was previously designated as the easement manager of a wildlife area that contains *Thelypodium howellii* ssp. *spectabilis* (Conservation Easement 1991). The conservation easement was established by the Farm Services Agency to protect a large wetland complex and related resources. However, a preliminary draft management plan (ODFW 1996) for this site does not adequately provide for the long-term maintenance of the plant and ODFW is withdrawing as easement manager (J. Lauman, ODFW, *in litt.* 1996; M. Smith, Service biologist, Oregon State Office, pers. comm. 1998). A new easement manager for the site has not been designated. Development of a final management plan for the site, which may better address concerns regarding the viability of this species (e.g., potential hydrological modifications of existing habitat), has not yet been initiated. In addition, although this site is under a conservation easement, trespass grazing by cattle has occurred on at least two occasions in the last three years and continues to threaten *T. howellii* ssp. *spectabilis* habitat onsite.

One *T. howellii* ssp. *spectabilis* site had a plant protection agreement between the landowner and The Nature Conservancy. However, the agreement has expired and the amount of occupied habitat (less than 0.5 ha (1 ac)) onsite is not expected to provide for the long-term viability of the species in the absence of intensive management (B. Youtie, The Nature Conservancy, pers. comm., 1998).

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Mowing of *T. howellii* ssp. *spectabilis* habitat at the Haines rodeo ground typically occurs annually, and can impact this species if performed during the growing season prior to seed set. Historically, annual rodeos were held in July; however, in 1995 an additional spring rodeo was held in May. Mowing to prepare for the spring rodeo occurs prior to seed set, and if this practice continues it will adversely affect reproduction of the plant. In some cases, mowing of *T. howellii* ssp. *spectabilis* habitat for the July rodeo can reduce reproduction if it occurs prior to seed set (see Factor A of this section). The Haines rodeo ground currently supports the third largest habitat area for *T. howellii* ssp. *spectabilis*.

Competition from nonnative plant species including *Dipsacus sylvestris* (teasel), *Cirsium vulgare* (bull thistle), *C. canadensis* (Canada thistle), and *Melilotus officinalis* (yellow sweet clover) also threatens the long-term survival of *Thelypodium howellii* ssp. *spectabilis* (Davis and Youtie 1995). The rapid expansion of *D. sylvestris* is considered a significant threat to this species (Larkin and Salzer 1992). At several sites, the formerly mesic meadow communities containing *Sarcobatus* (greasewood) and *T. howellii* ssp. *spectabilis* have largely been replaced by nonnative species.

At least two sites containing *T. howellii* ssp. *spectabilis* are directly adjacent to fields where crops such as wheat and barley are produced. The use of dicot-specific herbicides in these areas threatens *T. howellii* ssp. *spectabilis* when overspraying occurs (J. Kagan, plant ecologist, Oregon Natural Heritage Program, pers. comm., 1997). One of these sites (Clover Creek) currently contains the second largest habitat area for this species.

Because most populations of this species are small and existing habitat is fragmented by agricultural conversion, grazing, roads and urbanization, naturally occurring events, such as drought, represent threats to the continued existence of this species. Of the 11 sites for this species, 6 (50 percent) are 0.4 ha (1 ac) or less. Only 3 sites are larger than 4 ha (10 ac). Small, isolated parcels are vulnerable to edge effects (i.e., invasion by exotic plant species, disturbances by local residents) and are unlikely to contribute significantly to the long-term preservation of this species.

Livestock grazing tends to fragment *T. howellii* ssp. *spectabilis* populations by reducing the density of plants in

openings, and restricting individuals to protected sites (e.g., beneath *Sarcobatus* plants or spiny shrubs) (Kagan 1986, Robinson, *in litt.* 1996). Such habitat fragmentation also severely restricts the potential for plant population expansion. Most known populations of *T. howellii* ssp. *spectabilis* contain a low number of individual plants and are limited geographically so that future survival may depend on recovery actions such as restoring degraded habitat areas and removing competing nonnative vegetation.

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to issue this final rule. Most of the remaining sites that support *T. howellii* ssp. *spectabilis* are small and fragmented, and all existing sites are vulnerable to impacts from grazing, trampling, and non-native vegetation in addition to urban and agricultural development. One site is under a permanent conservation easement, although management of this site has not been completely effective at maintaining *T. howellii* ssp. *spectabilis* habitat in the past. We are currently working to better address management of the plant habitat at this site, which will include construction of fencing to protect habitat from livestock grazing and to assist in noxious weed control.

We have determined that listing as threatened rather than endangered is appropriate for this species primarily because we believe that grazing can be managed in a manner that will not adversely affect habitat for *T. howellii* ssp. *spectabilis*, and the site containing the largest habitat area for this taxon is subject to a permanent conservation easement. In addition, the State and local weed management agencies have initiated measures that afford some protection to *T. howellii* ssp. *spectabilis*, such as identifying areas to be avoided by herbicide application, and placing signs in the area. Based on this evaluation, the preferred action is to list *T. howellii* ssp. *spectabilis* as threatened. Alternatives to this action were considered but not preferred because not listing this species would not provide adequate protection and would not be consistent with the Act. In addition, listing this species as endangered would not be appropriate because the State of Oregon and local management agencies have decreased the danger of extinction of *T. howellii* ssp. *spectabilis* at the present time. However, if population declines continue and threats are not adequately addressed, this species could be threatened with extinction in the foreseeable future. For reasons discussed below, critical habitat is not being proposed at this time.

Critical Habitat

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

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is listed as endangered or threatened. Service regulations (50 (CFR 424.12 (a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist—(1) the species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

Section 7(a)(2) of the Act requires Federal agencies to consult with the Service to ensure that any action authorized, funded, or carried out by such agency, does not jeopardize the continued existence of a federally listed species or does not destroy or adversely modify designated critical habitat. The requirement that Federal agencies refrain from contributing to the destruction or adverse modification of critical habitat in any action authorized, funded or carried out by such agency (agency action) is in addition to the section 7 prohibition against jeopardizing the continued existence of a listed species, and it is the only mandatory legal consequence of a critical habitat designation. The Service's implementing regulations (50 CFR part 402) define ''jeopardize the continuing existence of'' and ''destruction or adverse modification of'' in very similar terms. To jeopardize the continuing existence of a species means to engage in an action ''that reasonably would be expected to reduce appreciably the likelihood of both the survival and recovery of a listed species.'' Destruction or adverse modification of habitat means an ''alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species.''

Common to both definitions is an appreciable detrimental effect to both the survival and recovery of a listed species. An action that appreciably diminishes habitat for recovery and survival may also jeopardize the continued existence of the species by reducing reproduction, numbers, or distribution because negative impacts to such habitat may reduce population numbers, decrease reproductive success, or alter species distribution through habitat fragmentation.

For a listed plant species, an analysis to determine jeopardy under section 7(a)(2) would take into consideration the loss of the species associated with habitat impacts. Such an analysis would closely parallel an analysis of habitat impacts conducted to determine adverse modification of critical habitat. As a result, an action that results in adverse modification also would almost certainly jeopardize the continued existence of the species concerned. Because habitat degradation and destruction is the primary threat to *Thelypodium howellii* ssp. *spectabilis*, listing it will ensure that section 7 consultation occurs and potential impacts to the species and its habitat are considered for any Federal action that may affect this species. In many cases, listing also ensures that Federal agencies consult with the Service even when Federal actions may affect unoccupied suitable habitat where such habitat is essential to the survival and recovery of the species. This is especially important for plant species where consideration must be given to the seed bank component of the species, which are not necessarily visible in the habitat throughout the year. A significant portion of their vegetative structure may not be in evidence during cursory surveys; occupancy of suitable habitat can only be reliably determined during the growing season. In practice, we consult with Federal agencies proposing projects in areas where the species was known to recently occur or to harbor known seed banks.

Apart from section 7, the Act provides no additional protection to lands designated as critical habitat. Designating critical habitat does not create a management plan for the areas where the listed species occurs; does

not establish numerical population goals or prescribe specific management actions (inside or outside of critical habitat); and does not have a direct effect on areas not designated as critical habitat.

Critical habitat designation for *Thelypodium howellii* ssp. *spectabilis* is not prudent because it would provide no additional benefit on non-Federal lands beyond that provided by listing. *T. howellii* ssp. *spectabilis* is known to occur only on private lands. Critical habitat designation provides protection on non-Federal lands or private lands only when there is Federal involvement through authorization or funding of, or participation in, a project or activity (Federal nexus). In other words, designation of critical habitat on non-Federal lands does not compel or require the private or other non-Federal landowner to undertake active management for the species or to modify any activities in the absence of a Federal nexus. Because all known occurrences of this plant are on private land, activities constituting threats to the species (see ''Summary of Factors Affecting the Species''), including grazing, agricultural and urban development, alterations of wetland hydrology, and competition from non-native vegetation, are generally not subject to section 7 consultation. Any Federal involvement, if it does occur, will be addressed regardless of whether critical habitat is designated because interagency coordination requirements such as the Fish and Wildlife Coordination Act and section 7 of the Act are already in place. When *T. howellii* ssp. *spectabilis* is listed, activities occurring on all lands subject to Federal jurisdiction that may adversely affect these species would prompt the requirement for section 7 consultation, regardless of whether critical habitat has been designated. Although there may occasionally be a Federal nexus for *T. howellii* ssp. *spectabilis* through regulation of wetland fill and removal activities regulated by the U.S. Corps through section 404 of under the Clean Water Act, the designation of critical habitat for this plant would provide no benefit beyond that provided by listing. For example, the plant is restricted to 11 known sites (seven less than an acre in size) in unique, moist, alkaline meadow habitat located in valley bottoms, and any action that would adversely modify habitat at these sites also would jeopardize the continued existence of the species, because the biological threshold for triggering either determination would be the same. In view of the limited habitat for this species, the loss of any of the 11 sites resulting from Corps regulated wetland fill activities would likely result in a jeopardy determination. Thus, in this case, the prohibition on adverse modification would provide no benefit beyond that provided by the prohibition on jeopardy. The designation of critical habitat, therefore, would not provide additional benefit for the species.

While a designation of critical habitat on private lands would only affect actions where a Federal nexus is present and would not confer any additional benefit beyond that already provided by section 7 consultation; and because virtually any action that would result in an adverse modification determination would also likely jeopardize the species, a designation of critical habitat on private lands could result in a detriment to the species. This is because the limited effect of a critical habitat designation on private lands is often misunderstood by private landowners whose property boundaries could be included within a general description of critical habitat for a specific species. Landowners may mistakenly believe that critical habitat designation will be an obstacle to land use and development and impose restrictions on their use of their property. In some cases, members of the public may believe critical habitat designation to be an attempt on the part of the government to confiscate their private property. Unfortunately, inaccurate and misleading statements reported through widely popular media available worldwide are the types of misinformation that can and have led private landowners to believe that critical habitat designations prohibit them from making private use of their land when, in fact, they face potential constraints only if they need a Federal permit or receive Federal funding to conduct specific activities on their lands, such as filling in wetlands. These types of misunderstandings, and the fear and mistrust they create among potentially affected landowners, makes it very difficult for us to cultivate meaningful working relationships with such landowners and to encourage voluntary participation in species conservation and recovery activities. Without the willing participation of landowners in the recovery process, we will find it very difficult to recover *T. howellii* ssp. *spectabilis* on the private lands where the only known populations occur.

We are currently working with involved agencies and landowners to periodically survey and monitor *T. howellii* ssp. *spectabilis* populations and develop plant management strategies. We have notified all involved parties and landowners of the importance of protecting the habitat of the remaining populations of *T. howellii* ssp. *spectabilis*, and plant protection agreements for some sites are in place. The livestock grazing threat is being addressed by working directly with landowners to adjust seasonal use and through fence construction to limit livestock trespass. The plant is palatable to livestock, and grazing occurring from April through July can be detrimental to annual seed production; grazing at other times of the year has little direct effect (Davis and Youtie 1995). Altered grazing practices can only be achieved through voluntary efforts of landowners; designation of critical habitat would not change grazing practices.

In addition to cooperative efforts between us and landowners, other governmental agencies offer opportunities to protect *T. howellii* ssp. *spectabilis*. All known locations of *T. howellii* ssp. *spectabilis* along road sides have been inconspicuously marked so Oregon State Highway Department crews can avoid destruction of plants during highway maintenance activities (A. Robinson, pers. comm. 1997). The U.S. Department of Agriculture, through its Wildlife Habitat Incentive Program offers funding to landowners which can be used to protect endangered plants, including *T. howellii* ssp. *spectabilis* (62 FR 49357). In view of ongoing actions and the lack of benefit provided by designation of critical habitat on non-Federal lands, we believe that conservation and protection of this plant will be accomplished more effectively through procedures other than critical habitat designation.

A designation of critical habitat for *T. howellii* ssp. *spectabilis* on private lands could inadvertently encourage habitat destruction by private landowners wishing to rid themselves of the perceived endangered species problem. Listed plants have limited protection under the Act, particularly on private lands. Section 9(a)(2) of the Act, implemented by regulations at 50 CFR section 17.61 (endangered plants) and 50 CFR 17.71 (threatened plants) only prohibits (1) removal and reduction of listed plant species to possession from areas under Federal jurisdiction, or their malicious damage or destruction on areas under Federal jurisdiction; or (2) removal, cutting, digging up, or damaging or destroying any such species in knowing violation of any State law or regulation, including State criminal trespass laws. Generally, on private lands, collection of, or vandalism to, listed plants must occur

in violation of State law to be a violation of section 9. The Oregon Endangered Species Act does not protect listed plants on private lands. Thus, a private landowner concerned about perceived land management conflicts resulting from a critical habitat designation covering his property would likely face no legal consequences if the landowner removed the listed species or destroyed its habitat. The designation of critical habitat involves the publication of habitat descriptions and mapped locations of the species in the **Federal Register**, increasing the likelihood of unwanted notice by potential search and removal activities at specific sites.

We acknowledge that in some situations critical habitat designation may provide some value to the species by notifying the public about areas important for the species conservation and calling attention to those areas in special need of protection. However, in this case, the few existing sites containing *T. howellii* ssp. *spectabilis* are already known by the affected private landowners. When this limited public notification benefit is weighed against the detriment to plant species associated with the widespread misunderstanding about the effects of such designation on private landowners and the environment of mistrust and fear that such misunderstandings can create, we conclude that the detriment to the species from a critical habitat designation covering non-federal lands outweighs the educational benefit of such designation and that such designation is therefore not prudent. The information and notification process can more effectively be accomplished by working directly with landowners and communities during the recovery planning process and by the section 7 consultation and coordination where the Federal nexus exists. The use of these existing processes will impart the same knowledge to the landowners that critical habitat designation would, but without the confusion and misunderstandings that may accompany a critical habitat designation.

Although this biennial plant is not of horticultural interest, the listing in and of itself may contribute to an increased risk from over-collection. Simply listing a species can precipitate commercial or scientific interest and activities, both legal and illegal, which can threaten the species through unauthorized and uncontrolled collection for both commercial and scientific purposes. The listing of species as endangered or threatened publicizes their rarity and may make them more susceptible to collection by researchers or curiosity seekers (Mariah Steenson pers. comm. 1997, M. Bosch, U.S. Forest Service *in litt.* 1997). Disseminating specific, sensitive locations can encourage plant poaching (M. Bosch, U.S. Forest Service, pers. comm., 1997). For example, the Service designated critical habitat for the mountain golden heather (*Hudsonia montana*), a small shrub not previously known to be commercially valuable or particularly susceptible to collection or vandalism. After the critical habitat designation was published in the **Federal Register**, unknown persons visited a Forest Service wilderness area in North Carolina where the plants occurred and, with a recently published newspaper article and maps of the plant's critical habitat designation in hand, asked about the location of the plants. Several plants we had been monitoring were later found to be missing from unmarked Service study plots (Nora Murdock, U.S. Fish and Wildlife Service, pers. comm. 1998). Designating critical habitat, including the required disclosure of precise maps and descriptions of critical habitat, would further advertise the rarity of *T. howellii* ssp. *spectabilis* and provide a road map to occupied sites causing even greater threat to the species from vandalism, trampling, or unauthorized collection (M. Steenson, Portland Nursery Inc., pers. comm., 1997). Easily accessible roadside populations with few individuals would be particularly susceptible to indiscriminate collection by persons interested in rare plants. Plants, unlike most animal species protected under the Act, are particularly vulnerable to collection because of their inability to escape when sought by collectors.

In conclusion, we have weighed the lack of overall benefit of critical habitat designation beyond that provided by virtue of being listed as threatened or endangered along with the limited benefit of public notification against the detrimental effects of the negative public response and misunderstanding of what critical habitat designation means and the increased threats of illegal collection and vandalism, and have concluded that critical habitat designation is not prudent for *T. howellii* ssp. *spectabilis*.

Available Conservation Measures

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

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with us.

Federal agencies that may have involvement with *Thelypodium howellii* ssp. *spectabilis* through section 7 include the Corps and the Environmental Protection Agency through their permit authority under section 404 of the Clean Water Act. The Federal Housing Administration and Farm Services Agency may be affected through potential funding of housing and farm loans where this species or its habitat occurs. Highway construction and maintenance projects that receive funding from the Department of Transportation (Federal Highways Administration) will also be subject to review under section 7 of the Act.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all threatened plants. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.71 for threatened plants, apply. These prohibitions, with respect to any endangered or threatened species of plants, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport or ship in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or remove and

reduce to possession from areas under Federal jurisdiction. Seeds from cultivated specimens of threatened plant taxa also are exempt from these prohibitions provided that a statement ''Of Cultivated Origin'' appears on the shipping containers. Certain exceptions apply to agents of the Service and State conservation agencies.

The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened plant species under certain circumstances. Such permits are available for scientific purposes and to enhance the propagation or survival of the species. For threatened plants, permits also are available for botanical or horticultural exhibition, educational purposes, or special purposes consistent with the purposes of the Act. We anticipate few trade permits would ever be sought or issued for the species because the plant is not common in cultivation or in the wild.

It is the policy of the Service, published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify, to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effects of the listing on proposed and ongoing activities within the species' range. Collection, damage or destruction of this species on Federal land is prohibited, although in appropriate cases a Federal permit could be issued to allow collection for scientific or recovery purposes. However, *T. howellii* ssp. *spectabilis* is not known to occur on public (Federal) lands. We believe that, based upon the best available information, the following actions will not result in a violation of section 9, provided these activities are carried out in accordance with existing regulations and permit requirements:

(1) Activities authorized, funded, or carried out by Federal agencies (if the species were found on Federal lands), (e.g., grazing management, agricultural conversions, wetland and riparian habitat modification, flood and erosion control, residential development, recreational trail development, road construction, hazardous material containment and cleanup activities, prescribed burns, pesticide/herbicide application, pipelines or utility lines crossing suitable habitat,) when such activity is conducted in accordance with any reasonable and prudent measures given by the Service in a consultation conducted under section 7 of the Act;

(2) Casual, dispersed human activities on foot or horseback (e.g., bird watching, sightseeing, photography, camping, hiking);

(3) Activities on private lands that do not require Federal authorization and do not involve Federal funding, such as grazing management, agricultural conversions, flood and erosion control, residential development, road construction, and pesticide/herbicide application when consistent with label restrictions;

(4) Residential landscape maintenance, including the clearing of vegetation around one's personal residence as a fire break.

We believe that the following might potentially result in a violation of section 9; however, possible violations are not limited to these actions alone:

(1) Unauthorized collecting of the species on Federal lands (if the species were to occur on Federal lands);

(2) Application of pesticides/herbicides in violation of label restrictions;

(3) Interstate or foreign commerce and import/export without previously obtaining an appropriate permit. Permits to conduct activities are available for purposes of scientific research and enhancement of propagation or survival of the species.

Questions regarding whether specific activities may constitute a violation of section 9 should be directed to the Field Supervisor of the Snake River Basin Office (see **ADDRESSES** section). Requests for copies of the regulations on listed plants and inquiries regarding them may be addressed to the U.S. Fish and Wildlife Service, Ecological Services, Permits Branch, 911 NE 11th Ave., Portland, Oregon 97232–4181 (503/231–6241).

National Environmental Policy Act

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

Paperwork Reduction Act

This rule does not contain any information collection requirements for which the Office of Management and Budget (OMB) approval under the Paperwork reduction Act, 44 U.S.C. 3501 *et seq.* is required. An information collection related to the rule pertaining to permits for endangered and threatened species has OMB approval and is assigned clearance number 1018–0094. This rule does not alter that information collection requirement. For additional information concerning permits and associated requirements for threatened species, see 50 CFR 17.32.

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Author. The primary author of this final rule is Edna Rey-Vizgirdas, U.S. Fish and Wildlife Service, Snake River Basin Office (see **ADDRESSES** section); telephone 208/378–5243.

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

Accordingly, amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations as set forth below:

PART 17—[AMENDED]

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

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

2. Amend section 17.12(h) by adding the following, in alphabetical order under FLOWERING PLANTS to the List of Endangered and Threatened Plants to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family name	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
*	*	*	*	*	*	*	
FLOWERING PLANTS							
*	*	*	*	*	*	*	
Thelypodium howellii ssp. *spectabilis.*	Howell's spectacular thelypody.	U.S.A. (OR)	Brassicaceae mustard.	T	662	NA	NA

Dated: April 28, 1999.

Jamie Rappaport Clark,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 99–13249 Filed 5–25–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AE25

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for the Plant Eriogonum apricum (inclusive of vars. apricum and prostratum) (Ione Buckwheat) and Threatened Status for the Plant Arctostaphylos myrtifolia (Ione Manzanita)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We determine endangered status pursuant to the Endangered Species Act of 1973, as amended (Act), for *Eriogonum apricum* (inclusive of vars. *apricum* and *prostratum*) (Ione buckwheat). We also determine threatened status for *Arctostaphylos myrtifolia* (Ione manzanita). These two species occur primarily on soils derived from the Ione Formation in Amador and/or Calaveras counties in the central Sierra Nevada foothills of California and are imperiled by one or more of the following factors—mining, clearing of vegetation for agriculture and fire protection, disease, inadequate regulatory mechanisms, habitat fragmentation, residential and commercial development, changes in fire frequency, and continued erosion due to prior off-road vehicle use. Existing regulatory mechanisms do not adequately protect these species. Random events increase the risk to the few, small populations of *E. apricum*. This action implements the protection of the Act for these plants.

EFFECTIVE DATE: June 25, 1999.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Sacramento Field Office, 3310 El Camino Avenue, Suite 130, Sacramento, California 95821–6340.

FOR FURTHER INFORMATION CONTACT: Kirsten Tarp (telephone 916/979–2120) and/or Jason Davis (telephone 916/979–2749), staff biologists at the above address (facsimile 916/979–2723).

SUPPLEMENTARY INFORMATION:

Background

Arctostaphylos myrtifolia (Ione manzanita), *Eriogonum apricum* var. *apricum* (Ione buckwheat), and *Eriogonum apricum* var. *prostratum* (Irish Hill buckwheat) are found primarily in western Amador County, about 70 kilometers (km) (43.5 miles (mi)) southeast of Sacramento in the central Sierra Nevada foothills of California. Most populations occur at elevations between 90 and 280 meters (m) (295 and 918 feet (ft)). A few isolated occurrences of *A. myrtifolia* occur in adjacent northern Calaveras County.

Both species included in this rule occur primarily on ''Ione soils'' which have developed along a 40 mile stretch of the Ione Formation. The Ione Formation, comprised of a unique Tertiary Oxisol, consisting of fluvial (stream or river produced), estuarine, and shallow marine deposits (Bureau of Land Management (BLM) 1989), was developed under a subtropical or tropical climate during the Eocene (35–57 million years ago). The Ione soils in the area are coarse-textured and exhibit soil properties typical of those produced under tropical climates such as high acidity, high aluminum content, and low fertility (Singer 1978). These soils and the sedimentary deposits with which they are associated also contain large amounts of commercially valuable minerals including quartz sands, kaolinitic (containing a hydrous silicate of aluminum) clays, lignite (low-grade coal), and possible gold-bearing gravels (Chapman and Bishop 1975). The nearest modern-day relatives to these soils occur in Hawaii and Puerto Rico (Singer 1978).

The vegetation in the Ione area is distinctive enough to be designated as ''Ione chaparral'' in a classification of plant communities in California (Holland 1986). Stebbins (1993) characterized the Ione chaparral as an ecological island, which he defined as a relatively small area with particular climatic and ecological features that differ significantly from surrounding areas. This plant community occurs only on very acidic, nutrient-poor, coarse soils, and is comprised of low-growing, heath-like shrubs and scattered herbs (Holland 1986). The dominant shrub is *Arctostaphylos myrtifolia*, which is narrowly endemic to the area. Ione chaparral is restricted in distribution to the vicinity of Ione in Amador County, and a few local areas of adjacent northern Calaveras County where the community is estimated to cover 2,430 hectares (ha) (6,002 acres (ac)) (California Natural Diversity Database (CNDDB) 1997). The endemic plants that grow here are thought to do so because they can tolerate the acidic, nutrient-poor conditions of the soil which exclude other plant species. The climate of the area may be moderated by its location due east of the Golden Gate (Gankin and Major 1964, Roof 1982).

Discussion of the Two Species

Charles Parry (1887) described *Arctostaphylos myrtifolia* based upon

material collected near Ione, California. Subsequent authors variously treated this taxon as *Uva-ursi myrtifolia* (Abrams 1914), A. *nummularia* var. *myrtifolia* (Jepson 1922), *Schizococcus myrtifolius* (Eastwood 1937, cited in Gankin and Major 1964), and *Arctostaphylos uva-ursi* ssp. *myrtifolia* (Roof 1982). Philip Wells (1993), in his treatment of California *Arctostaphylos*, maintained the species as *A. myrtifolia*.

Arctostaphylos myrtifolia is an evergreen shrub of the heath family (Ericaceae) that lacks a basal burl. Attaining a height of generally less than 1.2 m (3.9 ft), plants appear low and spreading. The bark is red, smooth, and waxy. Olive green, narrowly elliptic leaves are 6 to 15 millimeters (mm) (0.2 to 0.6 inches (in.)) long. Red scale-like inflorescence (flower cluster) bracts are 1 to 2 mm (0.04 to 0.08 in.) long. White or pinkish urn-shaped flowers appear from January to February. The fruit is cylindric. The species depends almost entirely on periodic fire events to promote seed germination (Wood and Parker 1988). *Arctostaphylos myrtifolia* can be distinguished from other species in the same genus by its smaller stature and the color of its leaves.

Arctostaphylos myrtifolia is reported from 17 occurrences (CNDDB 1997). Because most of these occurrences are based on the collection localities of individual specimens, it is uncertain how many stands these 17 occurrences represent. *Arctostaphylos myrtifolia* may occur in about 100 individual stands which cover a total of about 404.7 ha (1,000 ac) (Roy Woodward, Bechtel, *in litt.* 1994). It occurs primarily on outcrops of the Ione Formation within an area of about 91 square (sq.) km (35 sq. mi) in Amador County. In addition, a few disjunct populations occur in Calaveras County. The populations range in elevation from 60 to 580 m (190 to 1900 ft), with the largest populations occurring at elevations between 90 and 280 m (280 and 900 ft) (Wood and Parker 1988). *Arctostaphylos myrtifolia* is the dominant and characteristic species of Ione chaparral, where it occurs in pure stands. It also occurs in an ecotone (transition area between two adjacent ecological communities) with surrounding taller chaparral types, but it does not persist if it is shaded (R. Woodward, *in litt.* 1994). Mining, disease, clearing of vegetation for agriculture and fire protection, habitat fragmentation, residential and commercial development, changes in fire frequency, and ongoing erosion threaten various populations of this plant (CNDDB 1997; Ed Bollinger, Acting Area Manager, BLM, Folsom Resource Area, *in litt.* 1994; M. Wood, *in litt.* 1994) and existing regulatory mechanisms do not adequately protect the species. The amount of *A. myrtifolia* habitat already lost to mining cannot be quantified because information regarding the total mineral production as well as the total acreage of land newly disturbed by a mining operation is proprietary (Maryann Showers, California Department of Mining and Geology, pers. comm. 1994). Although the exact area of habitat lost is unknown, a significant loss of habitat has occurred (Roof 1982; Stebbins 1993; Michael K. Wood, Botanical Consultant, *in litt.* 1994). *Arctostaphylos myrtifolia* occurs primarily on private or non-Federal lands. One occurrence on BLM land is within the Ione Manzanita Area of Critical Environmental Concern (ACEC). Two additional occurrences are partially on BLM lands. Four small, pure populations and several smaller, mixed populations also occur on the State-owned Apricum Hill Ecological Reserve managed by the California Department of Fish and Game (CDFG) (Wood and Parker 1988).

Eriogonum apricum comprises two varieties—*Eriogonum apricum* var. *apricum* and *E. apricum* var. *prostratum*. Descriptions are provided below for each of the varieties.

Howell (1955) described the species *Eriogonum apricum* (Ione buckwheat) in 1955 based on a specimen collected in the foothills of the Sierra Nevada near Ione, Amador County, California. Myatt (1970) described a variety of the Ione buckwheat, *E. apricum* var. *prostratum* (Irish Hill buckwheat) in 1970. According to the rules for botanical nomenclature, when a new variety is described in a species not previously divided into infraspecific taxa, an autonym (an automatically generated name) is created. In this case, the autonym is *Eriogonum apricum* var. *apricum*.

Both varieties, *Eriogonum apricum* vars. *apricum* and *prostratum*, are perennial herbs in the buckwheat family (Polygonaceae). *Eriogonum apricum* var. *apricum* is glabrous (smooth, without hairs or glands) and grows upright to 8 to 20 centimeters (cm) (3 to 8 in.) in height. Its leaves are basal, round to oval, and 3 to 5 mm (0.1 to 0.2 in.) wide. The calyx (outer whorl of flower parts) is white with reddish midribs. *Eriogonum apricum* var. *apricum* flowers from July to October, and is restricted to nine occurrences occupying a total of approximately 4 ha (10 ac) (The Nature Conservancy (TNC) 1984) on otherwise barren outcrops within the Ione chaparral. Of the nine known occurrences of *E. apricum* var. *apricum*, one is partially protected by CDFG (CNDDB 1997). *Eriogonum apricum* var. *apricum* occurs primarily on private or non-Federal land; BLM manages one occurrence. Mining, clearing of vegetation for agriculture and for fire protection, habitat fragmentation, increased residential development, and erosion variously threaten the occurrences of this plant. Existing regulatory mechanisms do not adequately protect this species.

Eriogonum apricum var. *prostratum* has smaller leaves, a prostrate (low growing) habit, and an earlier flowering time than *E. apricum* var. *apricum*. The two known occurrences of *E. apricum* var. *prostratum* are restricted to otherwise barren outcrops on less than 0.4 ha (1 ac) in openings of Ione chaparral on private land. Mining, inadequate regulatory mechanisms, habitat fragmentation, erosion, and random events threaten the occurrences of this plant.

Previous Federal Action

Federal government actions on both plants began as a result of section 12 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct in the United States. The Smithsonian Institution presented this report, designated as House Document No. 94–51, to Congress on January 9, 1975. The report included *Arctostaphylos myrtifolia, Eriogonum apricum* var. *apricum* and *E. apricum* var. *prostratum* as endangered species. We published a notice on July 1, 1975 (40 FR 27823), of our acceptance of the report of the Smithsonian Institution as a petition within the context of section 4(c)(2) (petition provisions are now found in section 4(b)(3) of the Act) and our intention thereby to review the status of the plant taxa named therein. We included the above three taxa in the July 1, 1975, notice. On June 16, 1976, we published a proposal (41 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to section 4 of the Act. The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and us in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication. We included *Arctostaphylos myrtifolia, E. apricum* var. *apricum*, and *E. apricum* var. *prostratum* in our June 16, 1976, proposal.

We summarized general comments we received in response to the 1976

proposal in an April 26, 1978, rule (43 FR 17909). The Endangered Species Act Amendments of 1978 required that we withdraw all proposals over 2 years old. The Act gave proposals already more than 2 years old a 1-year grace period. In a December 10, 1979, **Federal Register** notice (44 FR 70796), we withdrew our June 16, 1976, proposal, along with four other proposals that had expired.

We published a notice of review for plants on December 15, 1980 (45 FR 82480), that identified those plants currently being considered for listing as endangered or threatened. We included *Arctostaphylos myrtifolia,* E. *apricum* var. *apricum,* and *E. apricum* var. *prostratum* as category 1 candidates for Federal listing in this document. Category 1 taxa were those taxa for which we had on file sufficient information on biological vulnerability and threats to support preparation of listing proposals but for which we are precluded from issuing proposed rules by higher priority listing actions. Our November 28, 1983, supplement to the notice of review (48 FR 53640) made no changes to the designation for these taxa.

We revised the plant notice of review again on September 27, 1985 (50 FR 39526), February 21, 1990 (55 FR 6184), and September 30, 1993 (58 FR 51144). In these three notices, we again included *Arctostaphylos myrtifolia, Eriogonum apricum* var. *apricum* and *E. apricum* var. *prostratum* as category 1 candidates. In our February 28, 1996, combined animal and plant notice of review (61 FR 7596), we discontinued the designation of multiple categories of candidates, and only former category 1 species are now recognized as candidates for listing purposes. We included all three taxa as candidates in that notice.

Section 4(b)(3)(B) of the Act requires the Secretary to make certain findings on pending petitions within 12 months of their receipt. Under section 2(b)(1) of the 1982 amendments, all petitions pending on October 13, 1982, are treated as having been newly submitted on that date. This was the case for *Arctostaphylos myrtifolia, Eriogonum apricum* var. *apricum* and *E. apricum* var. *prostratum,* because we accepted the 1975 Smithsonian report as a petition. On October 13, 1982, we found that the petitioned listing of these species was warranted, but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act. We published a notice of this finding on January 20, 1984 (49 FR 2485). Such a finding requires recycling the petition, pursuant to section 4(b)(3)(C)(i) of the Act. We reviewed the finding annually in October of 1983 through 1994.

We published a proposal to list *Eriogonum apricum* (inclusive of vars. *apricum* and *prostratum*) as endangered and to list *Arctostaphylos myrtifolia* as threatened on June 25, 1997 (62 FR 34188). We based the proposal on information supplied by reports to the CNDDB, and observations and reports by numerous botanists.

Processing of this final rule conforms with our Listing Priority Guidance for Fiscal Years 1998 and 1999, published on May 8, 1998 (63 FR 25502). The guidance clarifies the order in which we will process rulemakings giving highest priority (Tier 1) to processing emergency rules to add species to the Lists of Endangered and Threatened Wildlife and Plants (Lists); second priority (Tier 2) to processing final rules to add species to the Lists, processing proposed rules to add species to the Lists, processing administrative findings on petitions (to add species to the Lists, delist species, or reclassify listed species), and processing a limited number of proposed or final rules to delist or reclassify species; and third priority (Tier 3) to processing proposed or final rules to designate critical habitat. Processing of this final rule is a Tier 2 action.

We updated this rule to reflect any changes in distribution, status, and threats that occurred since publication of the proposed rule and to incorporate information obtained during the public comment period. This additional information did not alter our decision to list the two species.

Summary of Comments and Recommendations

In the proposed rule published in the June 25, 1997, **Federal Register** (62 FR 34188), we requested all interested parties to submit factual reports or information that might contribute to the development of a final rule. The public comment period closed on August 25, 1997. We contacted appropriate State agencies, county and city governments, Federal agencies, scientific organizations, and other interested parties and requested comments. We published a newspaper notice in the *Calaveras Enterprise* on July 8, 1997, the *Calaveras Prospect* and *Stockton Record* on July 10, 1997, and in the *Amador Ledger Dispatch* on July 11, 1997, which invited general public comment.

In accordance with interagency policy published on July 1, 1994 (59 FR 34270), we solicited the expert opinions of three independent and appropriate specialists regarding pertinent scientific or commercial data and assumptions relating to the taxonomy, population status, and supportive biological and ecological information for the three proposed plants.

Only one of the three requested reviewers provided comments. This reviewer supported the listing of both species addressed in this rule and commented specifically on *Arctostaphylos myrtifolia.* The reviewer wished to clarify any confusion that readers of the proposed rule may have had regarding the taxonomy of *A. myrtifolia* given the numerous name changes since 1887. The reviewer emphasized that this taxon is distinct and cannot be confused with any other manzanita. The numerous name changes stem from differing opinions among botanists regarding the relationship of this species to other California manzanitas.

The reviewer stated that *Arctostaphylos myrtifolia* is adapted to periodic fire, more specifically, fire recurring probably every 5 to 20 years. Recent suppression of the historic fire frequency has facilitated the establishment of fungal pathogens contributing to the demise of *A. myrtifolia.* The reviewer emphasized that the species could face serious decline in the future without proper fire management, that is, controlled burning during the appropriate time of the year and under proper climatic conditions. We incorporated the comments of the reviewer into the ''Summary of Factors Affecting the Species'' section of this rule.

During the comment period, we received comments (i.e., letters, phone calls, and facsimiles) from a total of 16 individuals or agency or group representatives concerning the proposed rule. Some people submitted more than one comment to us. Seven commenters supported the listing, four commenters opposed the listing, and five commenters were neutral. One commenter stated his willingness to work with Amador County, larger landowners, including mine operators, and us to develop a habitat conservation plan for the long-term benefit of both species. We organized opposing comments and other comments questioning the proposed rule into specific issues. We summarized these issues and our response to each as follows:

Issue 1: Several commenters questioned the adequacy and completeness of the scientific evidence reported in the proposed rule. Commenters stated that listing the two plants was premature due to the lack of

comprehensive and current science to support the listing.

Service Response: In Accordance with the ''Interagency Cooperative Policy on Information Standards under the Endangered Species Act,'' published in the **Federal Register** on July 1, 1994 (59 FR 34271), we impartially review all scientific and other information to ensure that any information used to promulgate a regulation to add a species to the list of threatened and endangered species is reliable, credible, and represents the best scientific and commercial data available. We used information received from the CNDDB, knowledgeable botanists, and from studies specifically directed at gathering information on distribution and threats to the species addressed in this final rule. We received information from Federal, State, and local agencies, and consulted professional botanists during the preparation of the proposed rule. We documented destruction and loss of habitat and extirpation of populations of these two plants from a variety of causes. We sought comments on the proposed rule from Federal, State, and county entities, species experts, and other individuals. We have incorporated into the final rule all substantive new data received during the public comment period. Specific information received that supports listing the two plant species is summarized in the ''Summary of Factors Affecting the Species'' section.

Issue 2: One commenter stated that the total extent of known populations of *Eriogonum apricum* as cited in the proposed rule is incorrect. This commenter further stated that there are 10 populations of *E. apricum* alone at the Irish Hill project site. Two commenters stated that several populations of *E. apricum* var. *apricum* have been discovered growing in Sacramento County, several miles north of the city of Ione, along the Amador/Sacramento County line.

Service Response: Neither commenter provided site-specific information. We are aware of the 10 populations of *E. apricum* at the Irish Hill project site; we referred to these populations in the proposed rule as one occurrence in the ''Discussion of the Two Species'' section. An occurrence may have several populations within it. Because we have received only anecdotal reports of new locations, we cannot confirm or refute the reports of *E. apricum* var. *apricum* in Sacramento County. The discovery of new populations of *E. apricum* var. *apricum* in Sacramento County, north of the city of Ione, along the Amador/Sacramento County line, however, is consistent with a verified occurrence of this species within 1,000 m (3,280.8 ft) of the Sacramento County line northwest of the city of Carbondale on the Ione Formation. The Ione Formation occurs in Sacramento County within the general vicinity of the reported sighting. We believe that undocumented populations of *E. apricum* var. *apricum* likely occur within Sacramento County, but given the limited amount of potential habitat in Sacramento County, we do not believe that these potential occurrences represent a significant expansion of the overall range of the species, or that they warrant a change in the status of the species.

Issue 3: Several commenters stated that *Eriogonum apricum* vars. *apricum* and *prostratum* and *Arctostaphylos myrtifolia* are not restricted to ''laterite'' (containing an iron-rich subsoil layer) soils as presented in the proposed rule. In addition, several commenters stated that the proposed rule inaccurately stated that the soil on which the two species grow was developed during the Eocene.

Service Response: We received substantial evidence during the comment period to document that *Eriogonum apricum* vars. *apricum* and *prostratum* and *Arctostaphylos myrtifolia* occur on a much wider range of substrates than was thought at the time we prepared the proposed rule. However, none of this new information contradicts the claim that all three taxa occur predominantly on soils developed on various strata of the Ione Formation, or that the plants are restricted to a narrow range in western Amador County. The relationship between substrate and the distribution of these plants, however strong the correlation, is not the reason we proposed these plants for listing. The specific threats these taxa face are identified in the ''Summary of Factors Affecting the Species'' section.

Issue 4: One commenter stated that the greatest potential threat to *Eriogonum apricum* is residential development. The commenter further stated that well-planned mining with reclamation plans that take *E. apricum* into account may be the best chance for the species' survival. Another commenter asserted that the statement in the proposed rule that the Ione buckwheat and Ione manzanita are imperiled by mining is an inaccurate statement. The same commenter also noted, however, that ''because of requirements of species diversity and percent of vegetative cover on mined lands disturbed since 1976 . . . Ione manzanita and Ione buckwheat are not species that can be considered in new reclamation plans.''

Service Response: We agree that residential development poses a significant long-term threat to these species given the substantial commercial and residential growth of nearby Sacramento. However, the more immediate threat to the Ione buckwheat and Ione manzanita is the continued extraction of mineral resources from soils that support these species. Ninety-five percent of all lands that support *Eriogonum apricum* and *Arctostaphylos myrtifolia* are in private ownership subject to ongoing and future mining activities. Mining operations are not required under State law to include locally native plants into their reclamation plans if these species are not compatible with the desired land use of the reclaimed site (e.g., grazing, water storage, or intensive agriculture). For a more detailed description of the threats these species face, see factors A and D in the ''Summary of Factors Affecting the Species'' section.

Issue 5: A few commenters stated that there are good opportunities to reestablish *Arctostaphylos myrtifolia* on reclaimed mining areas when a natural seed source occurs nearby or through the spreading of seeds by mine operators.

Service Response: We are unaware of any studies that document successful long-term reestablishment of *Arctostaphylos myrtifolia* populations on reclaimed mining areas. Mining operations in the Ione area typically remove the kaolinitic clay minerals and quartz sand that the species requires for long-term viability. *Arctostaphylos myrtifolia* has been shown to reestablish on fire breaks and similar situations where the original substrate was not removed, and plants have also established on waste rock piles. We are not aware of any scientific studies on the success of transplanting or seeding the plants under field conditions. Moreover, the long-term viability of the plants which have established on disturbed areas is unknown. Attempts to grow both *Eriogonum apricum* and *Arctostaphylos myrtifolia* off of their specialized substrate have been unsuccessful. Transplanted seedlings of *E. apricum* grew for only about 3 years before dying. *Arctostaphylos myrtifolia* seedlings have survived only about 10 years (Roger Raiche, Horticulturalist, Univ. of California Botanical Garden, Berkeley, *in litt.* 1997). For a more complete discussion on this topic, please see factors D and E in the ''Summary of Factors Affecting the Species'' section.

Issue 6: Two commenters stated that there are adequate regulatory mechanisms to protect *Eriogonum apricum* vars. *apricum* and *prostratum* and *Arctostaphylos myrtifolia*. These commenters believe that, through compliance with the California Surface Mining and Reclamation Act (SMARA) and the California Environmental Quality Act (CEQA), Amador County has created ordinances and permitting procedures that adequately protect these species.

Service Response: We believe that the existing regulatory mechanisms provided in the State, local, and county regulations are inadequate to protect these three plants. Both CEQA and SMARA can allow the destruction of these three plant taxa without adequate mitigation or avoidance. For a complete discussion on this topic, see factor D in the ''Summary of Factors Affecting the Species'' section and the ''Available Conservation Measures'' section.

Issue 7: One commenter stated that listing will inevitably move private property into government ownership. Another commenter questioned what sorts of activities could continue on private land should these species be formally listed.

Service Response: The Act does not restrict the damage or destruction of listed plants due to otherwise lawful private activities on private land beyond any level of protection that may be provided under State law. Listing the two species as threatened or endangered will not regulate mining or land clearing for farming, grazing, or fire protection on private land with no Federal involvement. Other activities that do not violate the taking prohibitions of section 9(a)(2) of the Act, along with prohibited activities, are discussed further in the ''Available Conservation Measures'' section. Those populations of plant species that occur on Federal lands may or may not be affected by some human activities. If a Federal agency makes the determination that an activity may affect a population of a listed plant species, the Federal agency is required to consult with us on the effects of the proposed action.

Issue 8: One commenter questioned how landowners will know if their land uses will affect the three plants if critical habitat is not designated.

Service Response: The public has access to general locational information on all three of these plants through the CNDDB. In addition, individuals owning land in these counties who believe that their actions or activities may result in harm to one of these plants may, if they desire to help conserve these species, contact us for technical assistance. We seek cooperation with private landowners on surveys or other conservation efforts. The complete file for this rule is available for public inspection, and does contain general information about where the species occur. We are always willing to assist the public in matters aimed at protecting sensitive species. See the ''Critical Habitat'' section for further discussion of our decision not to designate critical habitat for these species.

Issue 9: One commenter inquired whether private landowners would be allowed to participate in the development of a recovery plan for these species.

Service Response: The recovery planning process will involve species experts, scientists, and interested members of the public in accordance with the interagency policy on recovery plans under the Act, published on July 1, 1994 (59 FR 34272). The information and public education needs for successful recovery of these species are many, and we will address these needs in the recovery plan.

Issue 10: One commenter stated that the proposed rule should be withdrawn because we lack the authority under the Commerce Clause of the Constitution to regulate species that are found solely in one State and are neither harvested for commercial purposes nor transported across state lines.

Service Response: A recent decision in the United States Court of Appeals for the District of Columbia Circuit (*National Association of Homebuilders* v. *Babbitt*, 130 F. 3d 1041, D.C. Cir. 1997) makes it clear in its application of the test used in the United States Supreme Court case, *United States* v. *Lopez*, 514 U.S. 549 (1995), that regulation of species limited to one State under the Act is within Congress' commerce clause power. On June 22, 1998, the Supreme Court declined to accept an appeal of this case (118 S. Ct. 2340 1998). Therefore, our application of the Act to *Arctostaphylos myrtifolia* and *Eriogonum apricum* is constitutional.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, we have determined that *Arctostaphylos myrtifolia* should be classified as a threatened species and *Eriogonum apricum* (inclusive of vars. *apricum* and *prostratum*) should be classified as an endangered species. We followed the procedures found at section 4(a)(1) of the Act and regulations (50 CFR part 424) implementing the listing provisions of the Act. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Arctostaphylos myrtifolia* C. Parry (Ione manzanita) and *Eriogonum apricum* J. Howell (inclusive of vars. *apricum* and *prostratum* R. Myatt) (Ione buckwheat) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Their Habitat or Range

Nearly all populations of both plant species occur on private or non-Federal land. The primary threat facing both species is the ongoing and threatened destruction and modification of their habitat by mining for silica sand, clay, lignite, common sand and gravel; and reclamation of mined lands involving establishment of vegetation with which these species cannot co-exist. A lesser degree of threat is posed by commercial or residential development, clearing for agriculture and fire protection, and continued erosion due to previous fireline construction and driver training for California Department of Forestry and Fire Protection (CDFFP) employees.

The habitat of *Arctostaphylos myrtifolia* and *Eriogonum apricum* occurs in areas that contain valuable minerals. Clay mining began in the Ione area around 1860. Since that time, the Ione area has produced about a third of the fire clay in California (Chapman and Bishop 1975). Lignite, a low-grade coal, also has been mined in the Ione area since the early 1860s, initially for fuel, but more recently for wax used for industrial purposes. Chapman and Bishop (1975) reported the Ione lignites were the only lignites used commercially in the United States in the production of a specialized wax (montan wax). Quartz sand used in making glass containers, and laterite used for making cement also are commercially mined in the Ione area (Chapman and Bishop 1975). Common sands and gravels are also mined for various uses. Mining of all of these deposits has resulted in the direct removal of habitat for both plant species (Wood and Parker 1988; V. Thomas Parker, Professor of Biology, San Francisco State University, *in litt.* 1994; M. Wood, *in litt.* 1994). Strip mining of silica for glass and clay for ceramics and industrial filters has extirpated (caused extinction of) populations of *A. myrtifolia* north and south of Highway 88 (Roof 1982).

By 1982, a significant amount of habitat already had been lost (Roof 1982, Stebbins 1993; M. Wood, *in litt.* 1994). The exact amount of habitat loss

to date cannot be quantified because much information regarding the total mineral production as well as the total acreage of land newly disturbed by a mining operation is proprietary (M. Showers, pers. comm. 1994). Fifteen active surface mines on private land near Ione continue to remove the habitat of both plants; approved reclamation plans identify surface removal of greater than 1,400 ha (3,500 ac) (CDFG 1991, Mining Reports 1976–1993; V.T. Parker, *in litt.* 1994; M. Wood, *in litt.* 1994). Based on an estimate derived from mining reports on file at California Department of Geology and Mines, over half of the Ione chaparral habitat, numerous stands of *Arctostaphylos myrtifolia,* and most of the occurrences of *Eriogonum apricum* occur within areas that will be impacted by the 15 mines (Mining Reports 1976–1993). Mining has eliminated several populations of *A. myrtifolia* south of Ione since 1990 (V.T. Parker, *in litt.* 1994). If approved, the East Lambert Project, a proposed open pit to mine clay, lignite, and silica, would remove part of a population of *A. myrtifolia.* Clay mining threatens one of the two remaining occurrences of *E. apricum* var. *prostratum* (CDFG 1991). The second occurrence is not protected and potentially could be mined (CDFG 1991). Most of the nine occurrences of *E. apricum* var. *apricum* occur on private land that is not protected and could be mined.

As discussed in factor D of this section, mining results in conversion of former habitat to rangeland, pasture, and other agricultural uses; landowners do not restore the original plant community that was lost when the area was mined. Additionally, once the area is mined, the specialized substrate required by the plants may no longer be present. This type of disturbance permanently precludes restoration of habitat suitable for *Arctostaphylos myrtifolia* and *Eriogonum apricum*. To a lesser extent, land conversion to grazing and agriculture also has degraded or destroyed the habitat for these plants (Wood and Parker 1988; V.T. Parker, *in litt.* 1994; M. Wood, *in litt.* 1994). Both activities continue to pose threats to the habitat of the subject plant taxa.

Commercial and residential development also threatens the habitat of *Arctostaphylos myrtifolia.* In 1993, a 43 ha (106 ac) parcel in the city of Ione reported to have *A. myrtifolia* was cleared, presumably to facilitate future development (Randy L. Johnsen, Ione City Administrator, *in litt.* 1994). The Amador County master plan has zoned an area in the northern Ione chaparral near Carbondale for industrial uses. This area of about 75 ha (185 ac) is proposed to be developed over the next 10 years (Ron Mittlebrunn, Amador Council of Economic Development, pers. comm. 1994). Zoning for most lands outside the city of Ione permits a density of one house on 16 ha (40 ac) (Gary Clark, Amador County Planning Department, *in litt.* 1994). Habitat loss and degradation outside the city of Ione results from development of small ranchettes and associated clearing for fire protection, pastures, buildings, and infrastructure (G. Clark, *in litt.* 1994). Clearing destroys individual plants of both species and fragments and degrades the remaining habitat.

Mining operations, land clearing for agriculture, and commercial and residential development, have fragmented and continue to fragment and isolate the habitat of *Arctostaphylos myrtifolia* in Amador County. Habitat fragmentation may disrupt natural ecosystem processes by changing the amount of incoming solar radiation, water, wind, and/or nutrients (Saunders *et al.* 1991), and further exacerbates the impacts of mining, off-road vehicle use, and other human activities.

Training activities by the CDFFP caused the degradation of the population of *Arctostaphylos myrtifolia* occurring on the BLM Ione Manzanita ACEC. Building firelines and conducting driver training courses resulted in a criss-crossing of roads and trails within the ACEC that reduced and fragmented the habitat (BLM 1989). Although these practices were discontinued in 1991, the roads have not revegetated naturally, and continued erosion of the roads and adjacent habitat remains a concern (E. Bollinger, *in litt.* 1994). The BLM has requested our technical assistance regarding the restoration of *A. myrtifolia* to the ACEC (E. Bollinger, *in litt.* 1994).

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Overutilization is not currently known to be a factor for the two plants. However, increased publicity from the proposed and final listing rules may result in unrestricted collecting of *Eriogonum apricum* for scientific or horticultural purposes or excessive visits (and possibly trampling) by individuals interested in seeing rare plants.

C. Disease or Predation

Livestock graze where one population of *Eriogonum apricum* var. *prostratum* occurs, but grazing is not considered as harmful (CNDDB 1997). An unidentified fungal pathogen has caused major die-back of partial or entire stands of *Arctostaphylos myrtifolia* throughout its range (Wood and Parker 1988; M. Wood, *in litt.* 1994). The majority of populations of *A. myrtifolia* show signs of die-back. The fungal disease is a serious problem for the populations south of Ione (M. Wood, pers. comm. 1994). Stands along Highway 88 that were healthy a few years ago are apparently being killed with little evidence of seedling regeneration (Neil Havlik, Solano County Farmland and Open Space Foundation, pers. comm. 1994). The fungal problems are clearly due to senescence (extreme aging) of older individuals and pathogen loads that build up with crowding and accumulation of organic debris due to fire suppression (R. Raiche, *in litt.* 1997). To learn more about the management needs of *A. myrtifolia,* Wood and Parker conducted a series of controlled burns to test the regeneration of stands that had no, partial, and complete die-back. Stands that the fungus completely killed before burning did not regenerate. Healthy and partially affected stands regenerated, but study results did not determine whether this regeneration will result in healthy stands (M. Wood, *in litt.* 1994).

D. The Inadequacy of Existing Regulatory Mechanisms

Eriogonum apricum vars. *apricum* and *prostratum* are listed as endangered under the California Endangered Species Act (CESA) (chapter 1.5 section 2050 *et seq.* of the California Fish and Game Code and Title 14 California Code of Regulations 670.2). Individuals are required to obtain a management authorization from CDFG to possess or ''take'' a listed species under the CESA. Although the ''take'' of State-listed plants is prohibited (California Native Plant Protection Act, chapter 10 sec. 1908 and CESA, chapter 1.5 sec. 2080), State law exempts the taking of such plants via habitat modification or land use changes by the owner. This State law does not necessarily prohibit activities that could extirpate this species. After CDFG notifies a landowner that a State-listed plant grows on his or her property, State law requires only that the landowner notify the agency ''at least 10 days in advance of changing the land use to allow salvage of such a plant'' (Native Plant Protection Act, chapter 10 sec. 1913). Ten days may not allow adequate time for agencies to coordinate the salvage of the plants. Moreover, salvage is an outdated and biologically inappropriate mitigation that is inconsistent with measures implemented through section 7 of the Act. California Senate Bill 879,

passed in 1997 and effective January 1, 1998, requires individuals to obtain a section 2081(b) permit from CDFG to take a listed species incidental to otherwise lawful activities, and requires full mitigation of all impacts and successful implementation of all measures feasible. The ability of these requirements to protect species has not been tested, and we will need several years to evaluate their effectiveness in conserving species.

The California Environmental Quality Act of the California Public Resources Code (chapter 2 sec. 21050 *et seq.*) requires a full disclosure of the potential environmental impacts of proposed projects. The public agency with primary authority or jurisdiction over the project is designated as the lead agency and is responsible for conducting a review of the project and consulting with the other agencies concerned with the resources affected by the project. Section 15065 of the CEQA guidelines, now undergoing amendment, requires a finding of significance if a project has the potential to ''reduce the number or restrict the range of a rare or endangered plant or animal.'' Species that are eligible for listing as rare, threatened, or endangered are given the same protection as species officially listed under the State or Federal governments. Once significant effects are identified, the lead agency has the option of requiring mitigation for effects through changes in the project or deciding that overriding considerations make mitigation infeasible. In the latter case, the State may approve projects that cause significant environmental damage, such as the destruction of State-listed endangered species. The protection of *Eriogonum apricum* var. *apricum, E. apricum* var. *prostratum,* and *Arctostaphylos myrtifolia* under CEQA is, therefore, dependent upon the discretion of the lead agency.

Section 21080(b) of CEQA allows certain projects to be exempted from the CEQA process. The State may approve or carry out ministerial projects, those projects that the public agency must approve after the applicant shows compliance with certain legal requirements, without undertaking CEQA review. Examples of ministerial projects include final subdivision map approval and most building permits (Bass and Herson 1994). In addition, recent proposed revisions to CEQA guidelines, if made final, may weaken protection for threatened, endangered, and other sensitive species.

The California Surface and Mining Reclamation Act (SMARA) of 1975 (California Public Resources Code chapter 9 sec. 2710 *et seq.*) requires preventing or minimizing adverse environmental effects and reclaiming mined lands to a useable condition that is readily adaptable for alternative land uses. Although SMARA requires reclamation for mining activities, the standards for reclamation and the success of any revegetation is judged on the approved end use of the land. Approved examples of these end uses for mining activities within the Ione area include water storage for irrigation, grazing, rangeland, seeding with grasses for pasture, and intensive agriculture (Mining Reports 1976–1993). SMARA does not require replacement of the same vegetation type, species, or percentage of vegetation cover as the habitat that is lost. No approved mining reclamation plans included measures to attempt restoration of either *Arctostaphylos myrtifolia* or *Eriogonum apricum* or the Ione chaparral plant community, although one plan indicated an intention to allow *A. myrtifolia*, known to occur on the site, to re-establish itself (Mining Reports 1976–1993). We received a description of a reclamation project during the public comment period on the proposed rule (Mike Kizer, Ione Minerals & Refractories, *in litt.* 1997). An area previously stripped of all soil, vegetation, and overburden is contoured to a 3:1 slope. All vegetation growing on another area where *A. myrtifolia* is growing is crushed with a bulldozer. The crushed vegetation and soil is scraped and spread directly on the newly established slope. The site is then seeded with a mixture of non-native legumes and grasses and fertilized and limed. Mulch is then applied for erosion control. Based on this description of what is presumably a typical reclamation project, we maintain that land reclamation under SMARA establishes only a goal of revegetation of the site without regard to the original species composition and structure, not restoration of the original plant community that was lost when the area was mined. Even though such efforts may result in the reestablishment of *A. myrtifolia* on reclaimed sites, they are inadequate to meet the purpose of the Act, as stated in section 2(b), to ''provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved.'' Moreover, SMARA does not apply to many activities, including the prospecting or extraction of minerals for commercial purposes, or the removal of material that lies above or between natural mineral deposits in amounts less than 764.6 cubic m (1,000 cubic yards) in any location of 0.4 ha (1 ac) or less.

In addition, SMARA is also inadequate for protection of these species because reclamation plans are required to be submitted only for operations conducted after January 1, 1976. Surface mining operations that were permitted or authorized prior to January 1, 1976, are not required to submit reclamation plans as long as no substantial changes are made in their operation. The lead agency is responsible for determining what constitutes a substantial change in operation.

Although the city of Ione General Plan and the Environmental Impact Report of the Banks annexation to the city of Ione includes the protection of *Arctostaphylos myrtifolia* and *Eriogonum apricum* as a goal, the City has no regulatory mechanism to stop land clearing and/or preserve natural habitat (R. Johnsen, *in litt.* 1994). The County of Amador has taken steps toward protecting rare plants that grow along Ione area roadsides through the designation of surveyed sites as Environmentally Sensitive Areas. The California Department of Transportation (Caltrans) has also designated a segment of State Route 88 near Ione as a Botanical Management Area (Hartwell 1997). Caltrans manages this segment to encourage regrowth of native plants that grow on the highway right-of-way (Hartwell 1997).

Two preserves support occurrences of *Arctostaphylos myrtifolia* and *Eriogonum apricum* var. *apricum*. The Apricum Hill Ecological Reserve, managed by the CDFG, is about 15.2 ha (37.5 ac). The Ione Manzanita ACEC, managed by BLM, covers 35 ha (86 ac). Both preserves provide some protection of three occurrences of *A. myrtifolia* and one occurrence of *E. apricum* var. *apricum*; however, they are small sites and subject to edge effects such as shading by taller shrubs or competition with invasive vegetation (see factors A and E of this section for more detail).

E. Other Natural or Manmade Factors Affecting Its Continued Existence

The effects on *Arctostaphylos myrtifolia* of changing the frequency of occurrence of fire have not been well-studied. *Arctostaphylos myrtifolia* lacks the ability to crown sprout and is killed outright by fire. It must, therefore, reproduce by seed. Roof (1982) and Woodward (*in litt.* 1994) reported abundant post-fire seed germination. Woodward also reported successful reestablishment of the species on ground scraped by tractors during a fire suppression operation. The response of

A. myrtifolia to fire appears, however, to be irregular and unpredictable (Wood and Parker 1988).

Wood reports fire suppression results in stand die-off without regeneration (M. Wood, *in litt.* 1994). Scientists have observed mature individuals in well-established, undisturbed natural stands die. The species appears to have a low regenerative potential in closed stands (Wood and Parker 1988). Individual plants are thought to live not much longer than 50 years (Gankin and Major 1964). Individuals maintained in cultivation for many years have died suddenly for no apparent reason (S. Edwards, cited in Wood and Parker 1988).

Fire, therefore, appears to be necessary for the long-term maintenance of the Ione chaparral community. Controlled burning may be a viable means of ensuring adequate reproduction of *Arctostaphylos myrtifolia,* or perhaps even controlling or preventing loss due to the fungal pathogen (V.T. Parker, *in litt.* 1994; M. Wood, *in litt.* 1994). Field observations and controlled experiments to date, however, suggest exercising caution in the use of fire until the reasons for the variability in the response of *A. myrtifolia* are better understood. Progress toward better understanding of the response of *A. myrtifolia* to fire was thwarted when long term study sites established to study this response were graded and cleared by the landowner (V.T. Parker, *in litt.* 1994; M. Wood, *in litt.* 1994).

Reestablishment on mined areas may be difficult for the Ione chaparral plant community in general, and for *Arctostaphylos myrtifolia* in particular, due to a lack of the required specialized substrate and an absence of proven propagation methods (E. Bollinger, *in litt.* 1994). Researchers have attempted a variety of germination and seed bank experiments on *A. myrtifolia* without success (Wood and Parker 1988). Others have also attempted to cultivate the species with little or no success (R. Gankin, cited in Wood and Parker 1988). Although the plant has a limited capacity to root from its lower branches, Roof (1982) reported that he was unaware of even a single plant that had been grown or cultivated from a rooted branch. The only report of successful cultivation indicates that the plant requires high soil-acidity and heavy supplements of soluble aluminum (Roof 1982).

Throughout its range, on habitat edges where better soil development occurs, *Arctostaphylos myrtifolia* is being out-competed by other native vegetation (M. Wood, pers. comm. 1994; R. Woodward, *in litt.* 1994). *Arctostaphylos viscida* (white-leaf manzanita), a more rapidly growing, taller manzanita, encroaches along the edge of stands of *A. myrtifolia. Arctostaphylos myrtifolia* is eliminated when *A. viscida* grows tall enough to shade it (M. Wood, pers. comm. 1994; R. Woodward, *in litt.* 1994). This is not likely to be a significant threat to the species, however, because most stands occur on substrates from which taller shrubs are excluded.

As discussed in factor A, habitat fragmentation may alter the physical environment. Plant species may disappear from chaparral fragments that are from 10 to 100 ha (24.7 to 247 ac) in size due to persistent disturbance and potentially due to change in fire frequency (Soulé *et al.* 1992). In addition, habitat fragmentation increases the risks of extinction due to random environmental, demographic, or genetic events (Soulé *et al.* 1992). The two, small, isolated populations of *Eriogonum apricum* var. *prostratum,* makes random extinction more likely. Chance events, such as disease outbreaks, reproductive failure, extended drought, landslides, or a combination of several such events, could destroy part of a single population or entire populations. A local catastrophe also could decrease a population to so few individuals that the risk of extirpation due to genetic and demographic problems inherent to small populations would increase.

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in making this final determination. *Eriogonum apricum* (inclusive of vars. *apricum* and *prostratum*) is verified from 11 occurrences on approximately 4.4 ha (11 ac) in Amador County, California. The species is endangered by mining, clearing of vegetation for agriculture and for fire protection, inadequate regulatory mechanisms, habitat fragmentation, residential and commercial development, ongoing erosion, and random events. *Eriogonum apricum* is in danger of extinction throughout all or a significant portion of its range and the preferred action is, therefore, to list it as endangered. *Arctostaphylos myrtifolia* is reported from 17 sites, and estimated to occur in a total of about 100 stands covering about 404.7 ha (1,000 ac) in Amador County, with a few occurrences in Calaveras County. It is threatened by mining, disease, clearing of vegetation for agriculture and for fire protection, inadequate regulatory mechanisms, habitat fragmentation, increased residential development, and changes in fire frequency. Although *A. myrtifolia* faces many of the same threats as *E. apricum,* the significantly wider range and greater number of populations and individuals of *A. myrtifolia* moderate the threats. Thus, *A. myrtifolia* is not now in danger of extinction throughout a significant portion of its range, as is *E. apricum,* but is likely to become endangered within the foreseeable future. Therefore, the preferred action is to list *A. myrtifolia* as threatened.

Critical Habitat

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

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. The regulations (50 CFR 424.12(a)(2)) state that designation of critical habitat is not determinable when one or both of the following situations exist—(1) information sufficient to perform required analysis of the impacts of the designation is lacking, or (2) the biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat. The regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist—(1) the species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

We find that designation of critical habitat is not prudent for *Arctostaphylos myrtifolia* and *Eriogonum apricum,* because of increased degree of threat to each species and lack of benefit. The detriment to the species outweighs any

benefit that such designation may provide. The reasons for not designating critical habitat for these species is discussed below.

All three occurrences of *Arctostaphylos myrtifolia* on Federal lands are managed by the BLM; one of these occurrences lies within the Ione Manzanita ACEC. On Federal lands, modification of occupied habitat by any action authorized by the BLM is unlikely to occur without consultation under section 7 of the Act because BLM managers are well-aware of the presence and locations of *A. myrtifolia* (BLM 1989; E. Bollinger, *in litt.* 1994). Establishment of the ACEC indicates that the BLM will give the protection of the rare plant community on this parcel the highest priority in all management decisions (E. Bollinger, *in litt.* 1994). The BLM prohibits grazing in the ACEC, and has implemented erosion control measures on an off-road vehicle course previously used by CDFFP. In addition, the BLM has functionally withdrawn the ACEC and other habitats known to be occupied by the species from mineral entry (E. Bollinger, *in litt.* 1994; Al Franklin, Botanist, BLM, Folsom Resource Area, pers. comm. 1998) and has developed a management plan for the ACEC (BLM 1989). The BLM has also authorized experimental transplantation studies on the ACEC (Garland 1997). We believe, therefore, that designation of critical habitat on Federal land would confer no additional benefit to the species beyond that which is already afforded by current management.

Arctostaphylos myrtifolia faces human-caused threats (see factors A and E in ''Summary of Factors Affecting the Species'' section) and occurs predominately on private lands. Vandalism of *A. myrtifolia* has already occurred. A 43-hectare (106-acre) parcel of land previously identified in a public document as occupied habitat for this species was cleared in 1993, presumably to facilitate future development (R. Johnsen, *in litt.* 1994). A second incident of vandalism occurred in July 1997 shortly after the proposed listing rule was published in the **Federal Register** (Garland 1997). In this second incident, unknown vandals destroyed a scientific propagation study plot for *A. myrtifolia* on lands managed by the BLM.

Eriogonum apricum is known from only 11 verified populations covering an estimated total of 4.5 ha (11 ac) of habitat. *Eriogonum apricum* occurs in the same general area and on similar substrates as *Arctostaphylos myrtifolia* which has been vandalized as described above. Because of its few populations, *E. apricum* is especially vulnerable to impacts from loss of individuals or habitat damage due to vandalism.

The publication of precise maps and descriptions of critical habitat in the **Federal Register**, as required for the designation of critical habitat, however, would further increase the degree of threat to these species from vandalism and could contribute to their decline by making locational information readily available. Critical habitat designation requires publication of proposed and final rules in the **Federal Register** including both maps and specific descriptions of critical habitat using reference points and lines that can be matched to standard topographic maps of the area (see 16 U.S.C. 1533(b)(5)(A)(I) and (6)(A); 50 CFR 424.12(c), 424.16(a) and 424.18(a)). Once published in the **Federal Register**, proposed and final rules are readily available over the Internet, where complete copies, including maps, may be downloaded. The Act also requires us to publish a notice of any critical habitat proposal in a newspaper of general circulation and hold a public hearing upon request (16 U.S.C. 1533(b)(5)(D) and (E)). While the listing process provides the public with general information about the habitat of a species and where a species might occur in general terms, critical habitat designation makes more specific locational information readily available to any would-be vandal.

We find, therefore, that the increased degree of threat to *Arctostaphylos myrtifolia* and *Eriogonum apricum* from vandalism and habitat destruction outweigh any benefits that might derive from the designation of critical habitat.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires development of recovery plans for all listed species. We discuss the protection required of Federal agencies and the prohibitions against certain activities involving listed plants below.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If we subsequently list a species, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with us.

Almost all of the occurrences for both species are on private land. Three occurrences of *Arctostaphylos myrtifolia* and one occurrence of *Eriogonum apricum* var. *apricum* exist entirely or partially on Federal land managed by the BLM. Other potential Federal involvement includes the construction and maintenance of roads and highways by the Federal Highway Administration (two populations of *E. apricum* var. *apricum* occur along rights-of-way owned by Caltrans).

Listing these two plant species would provide for development of a recovery plan (or plans) for them. Such plan(s) would bring together both State and Federal efforts for conservation of the plants. The plan(s) would establish a framework for agencies to coordinate activities and cooperate with each other in conservation efforts. The plan(s) would set recovery priorities and estimate costs of various tasks necessary to accomplish them. It also would describe site-specific management actions necessary to achieve conservation and survival of the two plants. Additionally, pursuant to section 6 of the Act, we would be more likely to grant funds to affected States for management actions promoting the protection and recovery of these species.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered or threatened plants. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61 for endangered plants and 17.71 for threatened plants, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or remove and

reduce the species to possession from areas under Federal jurisdiction. In addition, for plants listed as endangered, the Act prohibits malicious damage or destruction on areas under Federal jurisdiction, and the removal, cutting, digging up, or damaging or destroying of such plants in knowing violation of any State law or regulation, including state criminal trespass law. Section 4(d) of the Act allows for the provision of such protection to threatened species through regulation. This protection may apply to *Arctostaphylos myrtifolia* in the future if regulations are promulgated. Seeds from cultivated specimens of threatened plants are exempt from these prohibitions provided that their containers are marked ''Of Cultivated Origin'' on the shipping containers. Certain exceptions to the prohibitions apply to our agents and agents of State conservation agencies.

It is our policy (59 FR 34272) to identify to the maximum extent practicable at the time a species is listed those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of the listing on proposed and ongoing activities within a species' range. Less than five percent of the occurrences of the two species occur on public (Federal) lands. Collection, damage, or destruction of these species on Federal lands is prohibited, although in appropriate cases a Federal endangered species permit may be issued to allow collection for scientific or recovery purposes. Such activities on non-Federal lands would constitute a violation of section 9 when conducted in knowing violation of California State law or regulations or in violation of State criminal trespass law.

Activities that are unlikely to violate section 9 include light to moderate livestock grazing, clearing a defensible space for fire protection around one's personal residence, and landscaping (including irrigation) around one's personal residence. Direct questions regarding whether specific activities will constitute a violation of section 9 to the Field Supervisor of the Sacramento Field Office (see **ADDRESSES** section).

The Act and 50 CFR 17.62 (for endangered plants) and 17.72 (for threatened plants) also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered or threatened plants under certain circumstances. Such permits are available for scientific purposes and to enhance the propagation or survival or the species. For threatened plants, permits also are available for botanical or horticultural exhibition, educational purposes, or special purposes consistent with the purposes of the Act. It is anticipated that few trade permits would ever be sought or issued for *Arctostaphylos myrtifolia* and *Eriogonum apricum*, because these species are not common in cultivation or in the wild. You can obtain copies of the regulations regarding listed species and inquire about prohibitions and permits by contacting the U.S. Fish and Wildlife Service, Endangered Species Permits, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181 (telephone 503/231–2063; facsimile 503/231–6243).

National Environmental Policy Act

We have determined that Environmental Assessments and Environmental Impact Statements as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Paperwork Reduction Act

This rule does not contain any new collections of information other than those already approved under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned Office of Management and Budget clearance number 1018–0094. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. For additional information concerning permit and associated requirements for endangered and threatened plants, see 50 CFR 17.62 and 17.72.

References Cited

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

Author. The primary authors of this final rule are Kirsten Tarp and Jason Davis, Sacramento Field Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

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

Regulations Promulgation

For the reasons given in the preamble, we amend 50 CFR part 17 as set forth below:

PART 17—[AMENDED]

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

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

2. In § 17.12(h) add the following to the List of Endangered and Threatened Plants in alphabetical order under ''FLOWERING PLANTS:''

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

SPECIES		Historic Range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common Name						
FLOWERING PLANTS							
*	*	*	*	*	*	*	
Arctostaphylos myrtifolia.	Ione manzanita	U.S.A. (CA)	Ericaceae—Heath ..	T	661	NA	NA
*	*	*	*	*	*	*	
Eriogonum apricum	Ione buckwheat (=Irish Hill buckwheat).	U.S.A. (CA)	Polygonaceae—Buckwheat.	E	661	NA	NA

SPECIES		Historic Range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common Name						
(inclusive of vars. *apricum* and *prostratum*).							
*	*	*	*	*	*		*

Dated: April 16, 1999.

Jamie Rappaport Clark,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 99–13250 Filed 5–25–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

CFR Part 230

[I.D. 012099C]

Whaling Provisions: Aboriginal Subsistence Whaling Quotas

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

ACTION: Notification of aboriginal subsistence whaling quotas.

SUMMARY: NMFS announces aboriginal subsistence whaling quotas and other limitations deriving from regulations adopted at the 1997 Annual Meeting of the International Whaling Commission (IWC). For 1999, the quotas are 75 bowhead whales struck, and 5 gray whales landed. These quotas and other limitations will govern the harvest of bowhead whales by members of the Alaska Eskimo Whaling Commission (AEWC) and the harvest of gray whales by members of the Makah Indian Tribe (Tribe).

DATES: Effective May 26, 1999.

ADDRESSES: International Fisheries Division, National Marine Fisheries Service, 1315 East West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Catherine Corson, (301) 713–2276.

SUPPLEMENTARY INFORMATION: Aboriginal subsistence whaling in the United States is governed by the Whaling Convention Act, (16 U.S.C. 916 *et seq.*) which requires the Secretary of Commerce (Secretary) to publish, at least annually, aboriginal subsistence whaling quotas and any other limitations on aboriginal subsistence whaling deriving from regulations of the IWC.

At the 1997 Annual Meeting of the IWC, the Commission set quotas for aboriginal subsistence use of bowhead whales from the Bering-Chukchi-Beaufort Seas stock, and gray whales from the Eastern stock in the North Pacific. The bowhead quota was based on a joint request by the United States and the Russian Federation, accompanied by documentation concerning the needs of 2 Native groups, Alaska Eskimos and Chukotka Natives in the Russian Far East. The gray whale quota was also based on a joint request by the Russian Federation and the United States, again with documentation of the needs of 2 Native groups, the Chukotka Natives and the Makah Indian Tribe in Washington State.

These actions by the IWC thus authorized aboriginal subsistence whaling by the AEWC for bowhead whales and by the Tribe for gray whales. The harvests will be conducted in accordance with cooperative agreements between NOAA and the AEWC, and between NOAA and the Makah Tribal Council (Council); these agreements are the means by which NOAA recognizes the AEWC and the Tribe as Native American whaling organizations under 50 CFR part 230.

Quotas

The IWC set a 5-year block quota of 280 bowhead whales landed. For each of the years 1998 through 2002, the number of bowhead whales struck may not exceed 67, except that any unused portion of a strike quota from any year, including 15 unused strikes from the 1995–1997 quota, may be carried forward. No more than 15 strikes may be added to the strike quota for any 1 year. At the end of the 1998 harvest, there were 15 unused strikes available for carry-forward, so the combined strike quota for 1999 is 82 (67 + 15).

The United States and the Russian Federation are concluding an arrangement to ensure that the total quota of bowhead whales landed and struck will not exceed the quotas set by the IWC. So that the 1999 quota of bowhead strikes is not exceeded, the Russian natives may use no more than 7 strikes, and the Alaska Eskimos may use no more than 75 strikes. Each side will ensure that the numbers specified in this paragraph for its native group are not exceeded. The two sides plan to confer on monitoring of the 2000 quota, including any strikes that may be carried forward from 1999. The AEWC will allocate these strikes among the 10 villages whose cultural and subsistence needs have been documented in past requests for bowhead quotas from the IWC.

The IWC also set a 5-year block quota (1998 through 2002) of 620 gray whales, with an annual cap of 140 animals taken. The IWC regulation does not address the number of allowed strikes. The requested quota and accompanying documentation assumed an average annual harvest of 120 whales by the Chukotka people and an average annual harvest of 4 whales by the Makah Indian Tribe.

The United States and the Russian Federation are concluding an arrangement to ensure that the block quota and annual cap for gray whales are not exceeded. So that the 1999 quota of gray whales is not exceeded, the bilateral arrangements concluded that the Makah Indian Tribe may take no more than five gray whales, and the Russian natives may take no more than 135 gray whales. Each side will ensure that the numbers specified in this paragraph for its native group are not exceeded. The two sides plan to confer on monitoring of the 2000 quota.

Thus, in accordance with this bilateral arrangement and the agreement between NOAA and the Council, the Makah hunters will take no more than 5 gray whales in any 1 year. The Council will manage the harvest to use no more than 33 strikes over the 5-year period, and will take measures to ensure that the overall ratio of struck whales to landed whales does not exceed 2:1. Because the U.S. request for a gray whale quota was not based on the needs of separate whaling villages, but rather on the needs of the Tribe as a whole, the Council will allocate the quota among whaling captains to whom permits have been issued.

Other Limitations

The IWC regulations, as well as the NOAA rule at 50 CFR 230.4(c), forbid

the taking of calves or any whale accompanied by a calf.

NOAA rules (at 50 CFR 230.4) contain a number of other prohibitions relating to aboriginal subsistence whaling, some of which are summarized here. Only licensed whaling captains or crew under the control of those captains may engage in whaling. They must follow the provisions of the relevant cooperative agreement between NOAA and a Native American whaling organization (the AEWC or the Council). The aboriginal hunters must have adequate crew, supplies, and equipment. They may not receive money for participating in the hunt. No person may sell or offer for sale whale products from whales taken in the hunt, except for authentic articles of Native handicrafts. Captains may not continue to whale after the relevant quota is taken, after the season has been closed, or if their licenses have been suspended. They may not engage in whaling in a wasteful manner.

Dated: May 18, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 99–13206 Filed 5–25–99; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 64, No. 101
Wednesday, May 26, 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.

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 741

Requirements for Insurance

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule.

SUMMARY: NCUA is proposing to revise its rules concerning capitalization of the share insurance fund through the maintenance of a deposit by each insured credit union, payment of an insurance premium, and equity distribution. NCUA is proposing these revisions to conform its regulation with recent changes to the Federal Credit Union Act.

DATES: The NCUA must receive comments on or before July 26, 1999.

ADDRESSES: Direct comments to Becky Baker, Secretary of the Board. Mail or hand-deliver comments to: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, or you may fax comments to (703) 518–6319. *Please send comments by one method only.*

FOR FURTHER INFORMATION CONTACT: Dennis C. Winans, Chief Financial Officer, Office of the Chief Financial Officer, at the above address or telephone: (703) 518–6570; or Regina M. Metz, Staff Attorney, Division of Operations, Office of General Counsel, at the above address or telephone: (703) 518–6540.

SUPPLEMENTARY INFORMATION:

A. Background

The Credit Union Membership Access Act (CUMAA) was enacted into law on August 7, 1998. Public Law 105–21. Section 302 of CUMAA amends section 202 of the Federal Credit Union Act providing for requirements for obtaining and maintaining share insurance coverage from the National Credit Union Share Insurance Fund (NCUSIF). 12 U.S.C. 1782. The revisions concern capitalization of the share insurance fund through the maintenance of a one percent deposit by each insured credit union, payment of an insurance premium, and distribution of fund equity. CUMAA also adds provisions concerning the NCUSIF's equity ratio and available assets ratio. The amendments will become effective January 1, 2000. Accordingly, NCUA is proposing to revise § 741.4 to implement the provisions of section 302 of CUMAA.

B. Section by Section Analysis

Section 741.4(a) Scope

The scope of the proposed rule is to implement the requirements of Section 202 of the Federal Credit Union Act, as amended by CUMAA. CUMAA provides for payment of an insurance premium not more than twice in any calendar year, rather than annually, as under the current rule. Therefore, the NCUA proposes to change the reference in this paragraph from ''payment of an annual insurance premium'' to ''payment of an insurance premium.''

Section 741.4(b) Definitions

In this paragraph, the NCUA proposes to incorporate CUMAA's definitions for the following terms: ''available assets ratio,'' ''equity ratio,'' ''insured shares,'' and ''normal operating level.'' The terms ''available assets ratio'' and ''equity ratio'' are new to the regulation. The proposed rule changes some words in the definitions for ''available assets ratio'' and ''equity ratio'' from CUMAA to be consistent with GAAP terminology. Department of Treasury staff with whom NCUA staff discussed these wording changes supports them. Under the proposed rule, after January 1, 2000, the NCUA will calculate the available assets ratio and equity ratio to determine whether to approve an annual distribution of NCUSIF equity to insured credit unions, and if so, the amount. Under the proposed rule, the NCUA will also use the equity ratio to determine whether to charge insured credit unions an insurance premium and if so, the amount. The proposed rule does not change the definition of ''insured shares,'' but renumbers it so that the list of defined terms remains in alphabetical order. The proposed section revises the definition of the ''normal operating level.'' The current rule defines normal operating level as 1.3% of the aggregate of all insured shares at the end of the insurance year, or such lower value as established by the action of the NCUA Board. The proposed rule defines normal operating level as an equity ratio, determined by the NCUA Board, from 1.2% to 1.5% at the end of the calendar year. As required by CUMAA, the proposed rule removes the definition for ''insurance year.'' The proposed rule adds a new definition for ''reporting period'' meaning calendar year for credit unions with total assets of less than $50 million and semiannual period for credit unions with total assets of $50 million or more.

To aid understanding of the new definitions for available assets ratio and equity ratio, the proposed rule contains a representation of the calculations in the style of a mathematical formula.

Section 741.4(c) One Percent Deposit

This proposed paragraph incorporates the provision of CUMAA that requires the NCUA to adjust the deposit amount semiannually for insured credit unions with assets of $50 million or more, while retaining the annual adjustment requirement for credit unions with less than $50 million in assets. If the aggregate amount of insured shares of the credit union has increased, the adjustment will be an increase in the deposit amount. If the aggregate amount of insured shares of the credit union has decreased, the adjustment will be a refund to the credit union.

Section 741.4(d) Insurance Premiums

This proposed paragraph incorporates CUMAA's provision that, as of January 1, 2000, insured credit unions will pay an insurance premium to the NCUA not more than twice in any calendar year, on the dates the Board determines. Under the current rule effective until January 1, 2000, all insured credit unions must pay to the NCUA an annual insurance premium of 1/12 of one percent of insured shares, unless the NCUA Board waives the premium.

As required by CUMAA, the proposed section requires the NCUA Board, as of January 1, 2000, to calculate the amount of the premium not more than twice in any calendar year based on the amount of the NCUSIF's equity ratio. The NCUA Board may only assess an insurance premium if the NCUSIF equity fund ratio is less than 1.3 percent. The premium charge must not exceed the amount necessary to restore the equity ratio to 1.3 percent. If the amount of the

equity ratio is less than 1.2 percent, the NCUA Board must assess an insurance premium in an amount to restore the equity ratio to 1.2 percent.

Section 741.4(e) Distribution of NCUSIF Equity

This paragraph incorporates the CUMAA provision that requires the NCUA Board to make a distribution of NCUSIF equity to insured credit unions after each calendar year when NCUSIF's available assets ratio exceeds one percent, and the NCUSIF exceeds its normal operating level. The current rule provides for a redistribution of NCUSIF equity after each insurance year if the NCUSIF exceeds its normal operating level, which is defined as 1.3 percent or such lower value as established by action of the NCUA Board. CUMAA and the proposed rule revise the definition of normal operating level to not less than 1.2 percent and not more than 1.5 percent of the aggregate of all insured shares at the end of the year as established by action of the NCUA Board. The current rule requires the amount of the distribution to reduce the NCUSIF to its normal operating level. The proposed rule requires the distribution to be an amount that reduces the NCUSIF to its normal operating level and to an available assets ratio of not below 1.0 percent. Under the proposed rule, the NCUA Board would use the aggregate amount of the insured shares from all insured credit unions from the final reporting period of the calendar year in calculating the NCUSIF's equity ratio and available assets ratio to determine whether to distribute NCUSIF equity.

The Board requests comments on the appropriate percentage for the normal operating level for the year 2000.

Section 741.4(f) Invoices

This paragraph states that the NCUA will provide copies of invoices to all federally insured credit unions in connection with the amount of their one percent deposit and any premium payment. The proposed rule updates and clarifies the current rule, in addition to incorporating changes required under CUMAA.

The current rule identifies the invoices as Forms 1304, for federally insured state-chartered credit unions, and 1305, for federal credit unions, and states that Form 1305 includes the annual operating fee. The NCUA no longer identifies the invoices as Forms 1304 and 1305. Therefore, the proposed rule generally replaces references to Forms 1304 and 1305 with the word ''invoices'' and states that invoices for federal credit unions include any annual operating fee due. The proposed rule also includes other small wording changes to update and clarify the current rule.

In addition, the current rule refers to the credit unions' annual premium payment. CUMAA changes the term of the premium payment from annual to not more than twice in any calendar year. Therefore, the proposed rule removes the word ''annual'' where it modifies ''premium payment'' to incorporate the changes required under CUMAA.

Sections 741.4(g) New Charters, (h) Conversion to Federal Insurance, and (j) Return of Deposit

As stated previously, CUMAA removes the term ''insurance year'' from Section 202 of the Federal Credit Union Act. CUMAA provides that the amount of the one percent deposit will be assessed annually for credit unions with total assets of not more than $50 million and semiannually for credit unions with total assets of $50 million or more. Therefore, the proposed rule conforms with CUMAA by removing the words ''insurance year'' where they appear in paragraphs (g) and (h) and replacing them with the words ''calendar year.'' The proposed rule also conforms with CUMAA by revising the wording in paragraph (h) to account for the revisions to paragraph (d) concerning premiums.

CUMAA and the proposed rule no longer automatically provide for an annual premium, but provide that the NCUA Board may assess a premium not more than twice in a calendar year. CUMAA also provides that any distribution of NCUSIF equity will occur after each calendar year. Therefore, the proposed rule conforms with CUMAA by removing the words ''insurance year'' where they appear in paragraph (j) and replacing them with ''calendar year.''

C. Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact any proposed regulation may have on a substantial number of small entities (primarily those under $1 million in assets). The NCUA has determined and certifies that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small credit unions. Accordingly, the NCUA has determined that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

NCUA has determined that the proposed amendments do not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget.

Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. As does the current rule, the proposed amendments will apply to federal credit unions and federally-insured state-chartered credit unions. NCUA has determined that the proposed amendments will not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

D. Agency Regulatory Goal

NCUA's goal is clear, understandable regulations that impose a minimal regulatory burden. We request your comments on whether the proposed rule is understandable and minimally intrusive if implemented as proposed. Commenters should note that CUMAA mandates the changes in this regulation.

List of Subjects in 12 CFR Part 741

Credit unions, Requirements for insurance.

By the National Credit Union Administration Board on May 19, 1999.

Becky Baker,

Secretary of the Board.

For the reasons set forth in the preamble, the National Credit Union Administration proposes to amend 12 CFR part 741 as follows:

PART 741—REQUIREMENTS FOR INSURANCE

Subpart A—Regulations That Apply To Both Federal Credit Unions and Federally Insured State-Chartered Credit Unions and That Are Not Codified Elsewhere in NCUA's Regulations

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

Authority: 12 U.S.C. 1782.

2. Amend § 741.4 as follows:

a. In paragraph (a), remove the word ''annual.''

b. In paragraph (g), remove the words ''insurance year'' from wherever they appear and add, in their place, the words ''calendar year.''

c. In paragraph (j), remove the words ''insurance year'' and add, in their place, the words ''calendar year.''

d. Redesignate paragraph (b)(2) as paragraph (b)(3), revise paragraph (b)(1), add new paragraphs (b)(2), (b)(4) and (b)(5), and revise paragraphs (c), (d), (e), (f), and (h) to read as follows:

§ 741.4 Insurance premium and one percent deposit.

* * * * *

(b) *Definitions.* For purposes of this section.

(1) *Available assets ratio* means the ratio of:

(i) The amount determined by subtracting all liabilities of the NCUSIF, including contingent liabilities for which no provision for losses has been made, from the sum of cash and the market value of unencumbered investments authorized under 12 U.S.C. 1783(c), to:

(ii) The aggregate amount of the insured shares in all insured credit unions.

(iii) Shown as an abbreviated mathematical formula, the available assets ratio is:

$$\frac{\text{(cash + market value of unencumbered investments)} - \text{(liabilities + contingent liabilities for which no provision for losses has been made)}}{\text{aggregate amount of all insured shares from final reporting period of calendar year}}$$

(2) *Equity ratio* means the ratio of:

(i) The amount of NCUSIF's capitalization, meaning insured credit unions' one percent capitalization deposits plus the retained earnings balance of the NCUSIF (less contingent liabilities for which no provision for losses has been made) to:

(ii) The aggregate amount of the insured shares in all insured credit unions.

(ii) Shown as an abbreviated mathematical formula, the equity ratio is:

$$\frac{\text{insured credit unions' 1.0\% capitalization deposits + (NCUSIF's retained earnings} - \text{contingent liabilities for which no provision for losses has been made)}}{\text{aggregate amount of all insured shares}}$$

(3) * * *

(4) *Normal operating level* means an equity ratio not less than 1.2 percent and not more than 1.5 percent, as established by action of the NCUA Board.

(5) *Reporting period* means calendar year for credit unions with total assets of less than $50,000,000 and means semiannual period for credit union with total assets of $50,000,000 or more.

(c) *One percent deposit.* Each insured credit union shall maintain with the NCUSIF during each reporting period a deposit in an amount equaling one percent of the total of the credit union's insured shares at the close of the preceding reporting period. For credit unions with total assets of less than $50,000,000, insured shares will be measured and adjusted annually based on the insured shares reported in the credit union's semiannual 5300 report due in January of each year. For credit unions with total assets of $50,000,000 or more, insured shares will be measured and adjusted semiannually based on the insured shares reported in the credit union's quarterly 5300 reports due in January and July of each year.

(d) *Insurance premium charges.* (1) *In general.* Each insured credit union will pay to the NCUSIF, on dates the NCUA Board determines, but not more than twice in any calendar year, an insurance premium in an amount stated as a percentage of insured shares, which will be the same for all insured credit unions.

(2) *Relation of premium charge to equity ratio of NCUSIF.* (i) The NCUA Board may assess a premium charge only if the NCUSIF's equity ratio is less than 1.3 percent and the premium charge does not exceed the amount necessary to restore the equity ratio to 1.3 percent.

(ii) If the equity ratio of NCUSIF falls below 1.2 percent, the NCUA Board is required to assess a premium in an amount it determines is necessary to restore the equity ratio to, and maintain that ratio at, 1.2 percent.

(e) *Distribution of NCUSIF equity.* If, as of the end of a calendar year, the NCUSIF exceeds its normal operating level and its available assets ratio exceeds 1.0 percent, the NCUA Board will make a proportionate distribution of NCUSIF equity to insured credit unions. The distribution will be the maximum amount possible that does not reduce the NCUSIF's equity ratio below its normal operating level and does not reduce its available assets ratio below 1.0 percent. The distribution will be after the calendar year and in the form determined by the NCUA Board. The form of the distribution may include a waiver of insurance premiums, premium rebates, or distributions from NCUSIF equity in the form of dividends. The NCUA Board will use the aggregate amount of the insured shares from all insured credit unions from the final reporting period of the calendar year in calculating the NCUSIF's equity ratio and available assets ratio for purposes of this paragraph.

(f) *Invoices.* The NCUA provides invoices to all federally insured credit unions stating any change in the amount of a credit union's one percent deposit and the computation and funding of any premium payment due. Invoices for federal credit unions also include any annual operating fees that are due. Invoices are calculated based on a credit union's insured shares as of the most recently ended reporting period. The invoices may also provide for any distribution the NCUA Board declares in accordance with paragraph (e) of this section, resulting in a single net transfer of funds between a credit union and the NCUA.

* * * * *

(h) *Conversion to Federal insurance.* An existing credit union that converts to insurance coverage with the NCUSIF shall immediately fund its one percent deposit based on the total of its insured shares as of the close of the month prior to conversion and, if any premiums have been assessed in that calendar year, will pay a prorated premium amount to reflect the remaining number of months in that calendar year. The credit union will be entitled to a prorated share of any distribution from

NCUSIF equity declared subsequent to the credit union's conversion.

* * * * *

[FR Doc. 99–13305 Filed 5–25–99; 8:45 am]

BILLING CODE 7535–01–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–SW–30–AD]

Airworthiness Directives; Bell Helicopter Textron, A Division of Textron Canada, Model 206L, L–1, L–3, and L–4 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD) applicable to Bell Helicopter Textron, A Division of Textron Canada (BHTC) Model 206L, L–1, L–3, and L–4 helicopters. This action would require the same type of actions required by the existing AD. In addition, the proposal would require an increase in the Retirement Index Number (RIN) multiplier for the mast, a correction in the model number, and other nonsubstantive changes. This proposal is prompted by further tests and analyses that indicate the RIN multiplier for the Model 206L–4 needs to be increased and the discovery of other errors in the existing AD. The actions specified by the proposed AD are intended to prevent fatigue failure of the mast or trunnion, which could result in loss of the main rotor system and subsequent loss of control of the helicopter.

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

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 99–SW–30–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. 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, a Division of Textron Canada, 12,800 Rue de L-Avenir, Mirabel, Quebec, Canada J7J1R4, ATTN: Product Support Engineering Light Helicopters. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Jurgen Priester, Aerospace Engineer, Rotorcraft Certification Office, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5159, fax (817) 222–5959.

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. 99–SW–30–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. 99–SW–30–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

On March 14, 1997, the FAA issued AD 97–07–07, Amendment 39–9981 (62 FR 16073). The AD required the creation of a component history card or equivalent record using the RIN system for certain masts and trunnions within the next 100 hours time-in-service (TIS) and a system for tracking increases to the accumulated RIN. That AD also established a retirement life for the trunnion based solely on a RIN of 24,000 and a retirement life for the mast based on a maximum RIN of 44,000 or the flight-hour service life limit, whichever occurs first. That AD was prompted by fatigue analyses and tests that show certain masts and trunnions fail sooner than originally anticipated because of the unanticipated higher number of torque events performed with those masts and trunnions in addition to the TIS accrued under other operating conditions. That condition, if not corrected, could result in fatigue failure of the mast or trunnion, which could result in loss of the main rotor system and subsequent loss of control of the helicopter.

Since the issuance of that AD, the FAA has discovered that the AD contained errors in two paragraphs. Paragraph (c)(2) incorrectly requires the operator to increase the mast RIN count for the Model 206L–4 by 1, when it should actually be increased by 2, for each torque event. Paragraph (c)(1)(i) contains an omission of the letter ''L'' from one helicopter model number. This AD would correct paragraph (c)(2) to avoid a miscalculation of the mast RIN and to correctly identify the Model 206L. This AD would also add nonsubstantive changes to the text. Paragraphs (b) and (c) would state that the RIN may be recorded on an ''equivalent record'' in lieu of a component history card. Paragraph (d) and (e) would state that this AD revises the Limitations section of the maintenance manual.

Explanation of Relevant Service Information

Bell Helicopter Textron, Inc. has issued Alert Service Bulletin No. 206L–94–99, Revision A, dated May 1, 1995 (ASB), which describes procedures for calculating the retirement life based on the RIN count.

FAA's Conclusions

These helicopter models are manufactured in Canada and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, Transport Canada has kept the FAA informed of the situation described above. The FAA has examined the findings of 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 BHTC Model 206L, L–1, L–3, and L–4 helicopters of the same type designs registered in the United States, the proposed AD would supersede AD 97–07–07 to prevent miscalculation of a RIN for Model 206L–4 main rotor masts. This AD would require creation of a component history card or equivalent record using a RIN system, establishing a system for tracking increases to the accumulated RIN, and a maximum accumulated RIN for masts and trunnions. The actions would be required to be accomplished in accordance with the ASB described previously.

The FAA estimates that 711 helicopters of U.S. registry would be affected by this AD, that it would take approximately (1) 8 work hours per helicopter to replace the mast and 10 work hours per helicopter to replace the trunnion due to the new method of determining the retirement life required by this AD; (2) 2 work hours per helicopter to create the component history card of equivalent record (record); (3) 10 work hours per helicopter to maintain the record each year, and that the average labor rate is $60 per work hour. Required parts would cost approximately $9,538 per mast and $2,083 per trunnion. Based on these figures, the cost impact of the AD on U.S. operators for the first year is estimated to be $2,016,989, and each subsequent year to be $1,945,889. These costs assume replacement of the mast and trunnion in one-sixth of the fleet each year, creation and maintenance of the records for all the fleet the first year, and creation of one-sixth of the fleet's records and maintenance of the records for all the fleet each subsequent year. The estimated cost impact amounts are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

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, would 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 removing Amendment 39–9981, Docket No. 95–SW–36–AD (62 FR 16073, dated April 4, 1997) and by adding a new airworthiness directive (AD) to read as follows:

Bell Helicopter Textron, A Division of Textron Canada: Docket No. 99–SW–30–AD. Supersedes AD 97–07–07, Amendment 39–9981, Docket 95–SW–36–AD.

Applicability: Model 206L, 206L–1, 206L–3, and 206L–4 helicopters, with main rotor mast (mast), part number (P/N) 206–040–535–001, –005, –101, or –105, installed, or main rotor trunnion (trunnion), P/N 206–011–120–103, installed, 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 request approval for an alternative method of compliance in accordance with paragraph (f) 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 100 hours time-in-service, unless accomplished previously.

To prevent fatigue failure of the mast or trunnion, which could result in loss of the main rotor system and subsequent loss of control of the helicopter, accomplish the following:

(a) Create a component history card or an equivalent record for the affected mast and trunnion.

(b) Determine the accumulated Retirement Index Number (RIN) to date based on the number of takeoffs and external load lifts (torque events) for parts in service in accordance with paragraphs 1 and 2 of the Accomplishment Instructions of Bell Helicopter Textron, Inc. Alert Service Bulletin No. 206L–94–99, Revision A, dated May 1, 1995 (ASB). Record this accumulated RIN on the component history card or equivalent record.

(c) After complying with paragraphs (a) and (b) of this AD, during each operation thereafter, maintain a count of the number of external load lifts and the number of takeoffs performed and at the end of each day's operations, increase the accumulated RIN on the component history card or equivalent record as follows:

(1) For the trunnion,

(i) Increase the RIN for the Model 206L, 206L–1, and 206L–3 helicopters by 1 for each torque event.

(ii) Increase the RIN for the Model 206L–4 helicopters by 2 for each torque event.

(2) For the mast,

(i) Increase the RIN for the Model 206L, 206L–1, 206L–3 helicopters by 1 for each torque event.

(ii) Increase the RIN for the Model 206L–4 helicopters by 2 for each torque event.

Note 2: Previous Model 206L–4 mast RIN calculations may have increased the RIN by only 1 for each torque event. This AD increases the Model 206L–4 mast RIN by 2 for each torque event.

(d) Remove the trunnion from service on or before attaining the maximum accumulated RIN (24,000) in accordance with Table 1 of the Accomplishment Instructions of the ASB. This AD revises the Limitations section of the maintenance manual by establishing a retirement life of 24,000 RIN for the trunnion.

(e) Remove the mast from service on or before attaining the maximum accumulated RIN (44,000) or the flight hour service life limit, whichever occurs first, in accordance with Table 2 of the Accomplishment Instructions the ASB. This AD revises the Limitations section of the maintenance manual by establishing a retirement life of 44,000 RIN for the mast.

(f) 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 appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Rotorcraft Certification Office.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be

obtained from the Rotorcraft Certification Office.

(g) 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.

Issued in Fort Worth, Texas, on May 18, 1999.

Mark R. Schilling,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 99–13318 Filed 5–25–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–SW–73–AD]

Airworthiness Directives; Bell Helicopter Textron, Inc. Model 204B, 205A, and 205A–1 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to Bell Helicopter Textron, Inc. (BHTI) Model 204B, 205A, and 205A–1 helicopters, that currently requires modification and inspections of the vertical fin spar for cracks. This action would require modification and visual and dye-penetrant inspections of the vertical fin spar for cracks, and if a crack is discovered, replacing the vertical fin spar. This action would also require a tapping test for disbonding and replacing certain fin spars within 12 calendar months. This proposal is prompted by an accident involving a Model 205A–1 helicopter and 4 other accidents involving helicopters of similar type design. The actions specified by the proposed AD are intended to prevent failure of the vertical fin spar, loss of the tail rotor, and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before July 26, 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–73–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. 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, Inc., P.O. Box 482, Fort Worth, Texas 76101, telephone (817) 280–3391, fax (817) 280–6466. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Harry Edmiston, Aerospace Engineer, Rotorcraft Certification Office, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5158, 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–73–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–73–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion:

On May 4, 1998, the FAA issued AD 97–18–11, Amendment 39–10520 (63 FR 26429, May 13, 1998), to require modifying and inspecting the vertical fin spar, and replacing it if a crack is found. That action was prompted by several failures of the vertical fin spar, including those with steel doublers, caused by fatigue cracks that result from a large number of high-power events. The requirements of that AD are intended to prevent failure of the vertical fin spar and subsequent loss of control of the helicopter.

Since the issuance of that AD, there have been 4 additional accidents involving models similar in type design to the Model 205A–1 helicopter that were caused by fatigue failure of the vertical fin spar. The manufacturer has issued BHTI Alert Service Bulletin (ASB) 205–98–71, Revision A, dated September 21, 1998, which specifies inspections of the vertical fin spar for cracks, and BHTI ASB No. 205–98–73, dated September 25, 1998, which specifies replacing the vertical fin spar assembly, part number (P/N) 205–030–899–101, 205–030–846–087 or –089, and P/N 205–032–851–003, –007, and –009, for the Model 205A and 205A–1 helicopters. Also, the manufacturer has issued BHTI ASB No. 204B–98–50, dated October 22, 1998, which specifies inspections of the fin spar for cracks, and replacing the fin spar assembly, P/N 205–030–846–001, –003, –047, –049, and P/N 205–030–899–001, –089, and P/N 204–030–825–063, –065. The FAA has further determined that the vertical fin spar must be replaced within 12 calendar months to ensure public safety.

Since an unsafe condition has been identified that is likely to exist or develop on other Model 204B, 205A, and 205A–1 helicopters of the same type design, the proposed AD would supersede AD 97–18–11 to require initial and repetitive inspections of the vertical fin spar for cracks. Also, replacing the vertical fin spar would be required within 12 calendar months. Replacing the vertical fin spar with a FAA-approved vertical fin spar configuration that satisfies the structural fatigue requirement of repeated high torque events would constitute a terminating action for the requirements of this AD.

The FAA estimates that 150 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 8 work hours per helicopter to accomplish the initial inspection and 0.5 work hour to accomplish each repetitive inspection. Replacing the vertical fin spar would

take approximately 150 work hours. The average labor rate is $60 per work hour. The manufacturer has stated that parts will be provided at no cost. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $76,500 for the initial inspection and one repetitive inspection, and $1,350,000 to replace the vertical fin spars on the entire fleet.

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 removing Amendment 39–10520 (63 FR 26429, May 13, 1998), and by adding a new airworthiness directive (AD), to read as follows:

Bell Helicopter Textron, Inc.: Docket No. 98–SW–73–AD. Supersedes AD 97–18–11, Amendment 39–10520, Docket No. 97–SW–32–AD.

Applicability: Model 204B helicopters with vertical fin spar (fin spar), part number (P/N) 205–030–899–001, –089, P/N 205–030–846–001, –003, –047,– 049, or P/N 204–030–825–063, –065, installed, and Model 205A and 205A–1 helicopters, with fin spar, P/N 205–030–899–101, P/N 205–030–846–087, –089, or P/N 205–032–851–003, –007, –009, installed, 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 (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the fin spar, loss of the tail rotor, and subsequent loss of control of the helicopter, accomplish the following:

(a) For Model 204B helicopters:

(1) Within 8 hours time-in-service (TIS), modify the vertical fin and visually inspect the fin spar for cracks in accordance with Part I (A1), paragraphs 1 through 5 of Bell Helicopter Textron (BHTI) Alert Service Bulletin (ASB) 204B–98–50, dated October 22, 1998.

(i) If a crack is discovered on the spar, replace the fin spar assembly with an airworthy fin spar assembly before further flight. Repair any corrosion or disbonding discovered during the inspection before further flight.

(ii) After inspection, apply MIL–PRF–81352 TYI clear lacquer or equivalent to the inside of the two lower rivet holes and on the surface where paint and primer were removed. Spray, brush or wipe on a protective coat of MIL–C–16173, Grade 2, or equivalent, over the clear lacquer. To facilitate subsequent inspections do not replace the two lower rivets. See Figure 2 of BHTI ASB 204B–98–50, dated October 22, 1998.

Note 2: BHTI–MED–SRM–1, pages 3–36 through 3–38, pertain to the installation of Hi-Loks.

(iii) Before drilling or reaming, inspect all holes in the spar cap where rivets were removed for short edge distance. An existing edge distance less than 1.5 times the diameter of the drill or reamed hole must have FAA approval of the reworked area before proceeding.

(iv) Fasten the forward left-hand fin skin to the spar assembly using Hi-Loks and blind rivets as specified in Figure 2 of BHTI ASB 204B–98–50, dated October 22, 1998.

(v) Refinish the reworked area.

(2) After initial modification and inspection of the fin, thereafter inspect the fin spar for cracks at intervals not to exceed 8 hours TIS as follows:

(i) Accomplish Part I (A2), paragraphs 1 through 3 of BHTI ASB 204B–98–50, dated October 22, 1998.

(ii) If a crack is discovered on the spar, replace the fin spar assembly with an airworthy fin spar assembly before further flight. Repair any corrosion or disbonding discovered during the inspection before further flight.

(iii) After inspection, accomplish Part I (A2), paragraphs 5 and 6 of BHTI ASB 204B–98–50, dated October 22, 1998.

(3) Within 25 hours TIS, modify and inspect the vertical fin as follows:

(i) Accomplish Part I (C1), paragraph 1 of BHTI ASB 204B–98–50, dated October 22, 1998.

(ii) Remove sufficient rivets from the bottom row of the forward left-hand fin skin to allow trimming of the forward left-hand fin skin along the ''skin cutline'', approximately fin station 64.31 (see Figure 2 of BHTI ASB 204B–98–50, dated October 22, 1998).

(iii) Before drilling or reaming, inspect all holes in the spar cap where rivets were removed for short edge distance. An existing edge distance less than 1.5 times the diameter of the drill or reamed hole must have FAA approval of the reworked area before proceeding.

(iv) Accomplish Part I (C1), paragraphs 3, 4, and 6 of BHTI ASB 204B–98–50, dated October 22, 1998.

(v) If a crack is discovered on the spar, replace the fin spar assembly with an airworthy fin spar assembly before further flight. Repair any corrosion or disbonding discovered during the inspection before further flight.

(vi) Accomplish Part I (C1), paragraphs 10 through 14 of BHTI ASB 204B–98–50, dated October 22, 1998.

(4) After the initial modification and dye-penetrant inspection of the fin spar, thereafter at intervals not to exceed 300 hours TIS, inspect the fin spar as follows:

(i) Accomplish Part I (C2), paragraphs 1, 2, 3, 4, 5, and 7 of BHTI ASB 204B–98–50, dated October 22, 1998.

(ii) If a crack is discovered on the spar, replace the fin spar assembly with an airworthy fin spar assembly before further flight. Repair any corrosion or disbonding discovered during the inspection before further flight.

(iii) Accomplish Part I (C2), paragraphs 11 through 14 of BHTI ASB 204B–98–50, dated October 22, 1998.

(5) Within 25 hours TIS, and thereafter at intervals not to exceed 300 hours TIS, inspect the fin spar as follows:

(i) Accomplish Part I (B), paragraphs 1 through 13 of BHTI ASB 204B–98–50, dated October 22, 1998.

(ii) Repair any disbonding discovered during the inspection before further flight.

(6) Within 12 calendar months, remove fin spar P/N 205–030–899–001, or –089, or P/N 205–030–846–001, –003, –047, or –049, or P/N 204–030–825–063, or –065. Replace it with an airworthy fin spar configuration that has been demonstrated to the FAA to satisfy the structural fatigue requirements of repeated high torque events and is approved by the Manager, Rotorcraft Standards Staff.

(7) Installation of a replacement fin spar approved by the Manager, Rotorcraft Standards Staff, constitutes a terminating action for the requirements of this AD.

(b) For Model 205A and 205A–1 helicopters:

(1) Within 8 hours TIS, modify the vertical fin and visually inspect the fin spar for cracks in accordance with Part I (A1), paragraphs 1 through 5 of BHTI ASB 205–98–71, Revision A, dated September 21, 1998.

(i) If a crack is discovered on the spar, replace the fin spar assembly with an airworthy fin spar assembly before further flight. Repair any corrosion or disbonding discovered during the inspection before further flight.

(ii) After inspection, apply MIL–PRF–81352 TYI clear lacquer or equivalent to the inside of the two lower rivet holes and on the surface where paint and primer were removed. Spray, brush, or wipe on a protective coat of MIL–C–16173, Grade 2, or equivalent, over the clear lacquer. To facilitate subsequent inspections do not replace the two lower rivets. See figure 2 of BHTI ASB 205–98–71, Revision A, dated September 21, 1998.

(iii) Before drilling or reaming, inspect all holes in the spar cap where rivets were removed for short edge distance. An existing edge distance less than 1.5 times the diameter of the drill or reamed hole must have FAA approval of the reworked area before proceeding.

(iv) Fasten the forward left-hand fin skin and the retainer, P/N 205–032–851–045, to the fin spar assembly using Hi-Loks and blind rivets as specified in Figure 2 of BHTI ASB 205–98–71, Revision A, dated September 21, 1998. Reinstall clip and radius block (if existing) removed in paragraph 2 of Part 1 (A1) of BHTI ASB 205–98–71, Revision A, dated September 21, 1998.

(v) Refinish the reworked area.

(2) After initial modification and inspection of the vertical fin, thereafter, inspect the fin spar for cracks at intervals not to exceed 8 hours TIS as follows:

(i) Accomplish Part I (A2), paragraphs 1 through 3 of BHTI ASB 205–98–71, Revision A, dated September 21, 1998.

(ii) If a crack is discovered on the spar, replace the fin spar assembly with an airworthy fin spar assembly before further flight. Repair any corrosion or disbonding discovered during the inspection before further flight.

(iii) After inspection, accomplish Part I (A2), paragraphs 5 and 6, of BHTI ASB 205–98–71, Revision A, dated September 21, 1998.

(3) Within 25 hours TIS, modify and inspect the vertical fin as follows:

(i) Accomplish Part I (C1), paragraph 1 of BHTI ASB 205–98–71, Revision A, dated September 21, 1998.

(ii) Remove the clip, P/N 212–030–099–091, and radius block, P/N 212–030–099–095, if present. Remove the retainer, P/N 205–032–851–045, and sufficient rivets from the bottom row of the forward left-hand fin skin to allow trimming of the forward left-hand fin skin along the ''skin cutline'', at approximately Fin Station 66.31 (see Figure 2 of BHTI ASB 205–98–71, Revision A, dated September 21, 1998).

(iii) Before drilling or reaming, inspect all holes in the spar cap where rivets were removed for short edge distance. An existing edge distance less than 1.5 times the diameter of the drill or reamed hole must have FAA approval of the reworked area before proceeding.

(iv) Accomplish Part I (C1), paragraphs 3, 4, and 6 in BHTI ASB 205–98–71, Revision A, dated September 21, 1998.

(v) If a crack is discovered on the spar, replace the fin spar assembly with an airworthy fin spar assembly before further flight. Repair any corrosion or disbonding discovered during the inspection before further flight.

(vi) Accomplish Part I (C1) paragraphs 10 through 14 of BHTI ASB 205–98–71, Revision A, dated September 21, 1998.

(4) After the initial modification and dye-penetrant inspection of the fin spar, thereafter, at intervals not to exceed 300 hours TIS, inspect the fin spar as follows:

(i) Accomplish Part I (C2), paragraphs 1, 2, 3, 4, 5, and 7 of BHTI ASB 205–98–71, Revision A, dated September 21, 1998.

(ii) If a crack is discovered on the spar, replace the fin spar assembly with an airworthy fin spar assembly before further flight. Repair any corrosion or disbonding discovered during the inspection before further flight.

(iii) Accomplish Part I (C2), paragraphs 11 through 14 of ASB 205–98–71, Revision A, dated September 21, 1998.

(5) Within 25 hours TIS, and thereafter at intervals not to exceed 300 hours TIS inspect the fin spar as follows:

(i) Accomplish Part I (B), paragraphs 1 through 13 of BHTI ASB 205–98–71, Revision A, dated September 21, 1998.

(ii) Repair any disbonding discovered during the inspection before further flight.

(6) Within 12 calendar months, remove fin spar, P/N 205–030–899–001, or –089, or P/N 205–030–846–087, or –089, or P/N 205–032–851–003, –007, or –009. Replace it with an airworthy fin spar configuration that has been demonstrated to the FAA to satisfy the structural fatigue requirements of repeated high torque events and is approved by the Manager, Rotorcraft Standards Staff, or replace it with fin spar assembly, P/N 205–530–514–103, as specified in BHTI ASB 205–98–73, dated September 25, 1998.

(7) Installing fin spar, P/N 205–530–514–103, or a fin spar that has been approved by the Manager, Rotorcraft Standards Staff, constitutes terminating action for the requirements 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 Certification Office. Operators shall submit their requests through a FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office.

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

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

Issued in Fort Worth, Texas, on May 18, 1999.

Mark R. Schilling,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 99–13319 Filed 5–25–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF JUSTICE

28 CFR Part 81

[AG Order No. 2226–99]

RIN 1105–AA65

Office of the Attorney General; Designation of Agencies To Receive and Investigate Reports Required Under the Protection of Children From Sexual Predators Act

AGENCY: Department of Justice.

ACTION: Proposed rule.

SUMMARY: This proposed rule is intended to carry out the Attorney General's responsibilities under the child pornography reporting provisions of the Protection of Children from Sexual Predators Act of 1998 (PCSPA). The PCSPA requires providers of an electronic communication service or a remote computing service to the public, through a facility or means of interstate or foreign commerce, to report incidents of child pornography, as defined by section 2251, 2251A, 2252, 2252A, or 2260 of title 18, United States Code, to the appropriate Federal agency. In order to facilitate effective reporting, the PCSPA requires the Attorney General to designate ''a law enforcement agency or agencies'' to receive and investigate such reports of child pornography. This proposed rule sets forth the Attorney General's proposed designations and certain other matters covered by the PCSPA's reporting requirements.

DATES: Written comments must be submitted on or before July 26, 1999.

ADDRESSES: Please submit written comments, in triplicate, to the Chief, Child Exploitation and Obscenity Section, Criminal Division, Department

of Justice, 1331 F Street, NW, Suite 600, Washington, DC 20530. Comments are available for public inspection at the above address by calling (202) 514–5780 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Terry R. Lord, Chief, Child Exploitation and Obscenity Section, Criminal Division, (202) 514–5780, or in writing at 1331 F Street, NW, Suite 600, Washington, DC 20530.

SUPPLEMENTARY INFORMATION: The child pornography reporting provisions of the Protection of Children from Sexual Predators Act (PCSPA) were enacted as Section 604 of the Act, Public Law 105–314, 112 Stat. 2974, codified at 42 U.S.C. 13032, and 18 U.S.C. 2702(b)(6). As set forth at 42 U.S.C. 13032, the PCSPA requires providers of electronic communication services or remote computing services to the public, through a facility or means of interstate or foreign commerce, who obtain knowledge of facts or circumstances from which a violation of sections 2251, 2251A, 2252, 2252A, or 2260 of title 18, United States Code, involving child pornography, as defined in section 2256 of title 18, United States Code, is apparent, to make a report of such facts or circumstances to a law enforcement agency or agencies designated by the Attorney General. Set forth below for public comment is the proposed rule promulgating the Attorney General's designation of the agencies to receive and investigate these reports of child pornography. Under the proposed rule, reports of child pornography made pursuant to 42 U.S.C. 13032 are to be submitted to the Federal agencies that currently have jurisdiction to investigate reports of child pornography on electronic communication services or remote computing services.

Regulatory Flexibility Act

The Attorney General in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact upon a substantial number of small entities. Rather than requiring the costly submission of a written report and accompanying evidence to the FBI or U.S. Customs Service, the proposed regulation requires that the electronic communication service or remote computing service notify the FBI or U.S. Customs Service by telephone, either to a local office or an ''800'' number, or by a special Internet tip line operated by the agencies. In this manner, the proposed regulation complies with the reporting statute, while limiting the service provider's costs as much as possible.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This regulation has been drafted and reviewed in accordance with Executive Order 12866, § 1(b), Principles of Regulation. The Department of Justice has determined that this rule is not a ''significant regulatory action'' under § 3(f) of Executive Order 12866, Regulatory Planning and Review because it will have an annual effect on the economy of less than $100 million. As noted, the costs of compliance for the electronic communications and remote computing service industry have been limited to the costs of a telephonic report. Accordingly, this rule has not been reviewed by the Office of Management and Budget.

Executive Order 12612

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

Executive Order 12988—Civil Justice Reform

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Plain Language Instructions

We try to write clearly. If you suggest how to improve the clarity of these regulations, call or write Terry R. Lord, Chief, Child Exploitation and Obscenity Section, Criminal Division, 1331 F Street, NW, Suite 600, Washington, DC 20530, (202) 514–5780.

List of Subjects in 28 CFR Part 81

Child abuse, Federal buildings and facilities, Child pornography, Electronic communication services, Remote computing services.

By virtue of the authority vested in me as Attorney General, including 28 U.S.C. 509 and 510, 5 U.S.C. 301, 42 U.S.C. 13032, and Public Law 105–314, 112 Stat. 2974, Part 81 of title 28, Code of Federal Regulations, is proposed to be amended as follows:

PART 81—CHILD ABUSE AND CHILD PORNOGRAPHY REPORTING DESIGNATIONS AND PROCEDURES

1. The heading for Part 81 is revised as set forth above.

2. The authority citation for Part 81 is revised to read as follows:

Authority: 28 U.S.C. 509, 510; 42 U.S.C. 13031, 13032.

3. Sections 81.1 through 81.5 are designated as subpart A and a new subpart heading is added to read as follows:

Subpart A—Child Abuse Reporting Designations and Procedures

4. Section 81.1 is amended by removing the words ''this part'' and inserting in their place ''this subpart A.''

5. Part 81 is amended by adding at the end thereof the following new subpart B to read as follows:

Subpart B—Child Pornography Reporting Designations and Procedures

Sec.

§ 81.11 Purpose.

The regulations in this subpart B designate the agencies that are authorized to receive and investigate reports of child pornography under the provisions of 42 U.S.C. 13032.

§ 81.12 Submission of reports; designation of agencies in cases where identifying information about the perpetrator is known.

Where the provider of the electronic communication service or remote computing service to the public learns of information concerning a violation of federal child pornography statutes, as defined by section 2251, 2251A, 2252, 2252A, or 2260 of title 18, United States Code, it shall report the violation, as required by 42 U.S.C. 13032, to the Federal Bureau of Investigation or the United States Customs Service. If the provider knows the location of the perpetrator, it shall report the violation to the Federal Bureau of Investigation in the state where the perpetrator lives. If the provider knows that the perpetrator is located in a foreign country, it shall report the violation to the United States Customs Service. The Federal Bureau of Investigation and the United States Customs Service are hereby respectively designated as the agency to receive and investigate such reports, pursuant to 42 U.S.C. 13032(b)(2).

§ 81.13 Designation of Federal Bureau of Investigation and United States Customs Service in cases where the identity of the perpetrator is unknown.

For cases where the identity of the perpetrator is unknown, the Federal Bureau of Investigation is hereby designated as the agency to receive and investigate reports of child pornography made pursuant to 42 U.S.C. 13032. For cases where the identity of the perpetrator is unknown, but the items of child pornography are believed to be of foreign origin, the United States Customs Service is designated as the agency to receive and investigate reports of child pornography made pursuant to 42 U.S.C. 13032. The provider shall report the violation to the Federal Bureau of Investigation or the United States Customs Service in the state where the provider is located.

§ 81.14 Contents of report; no duty to develop additional information or monitor customer use or content.

(a) The provider shall report whatever information it obtained that led it to conclude that a violation of federal child pornography statutes, as defined by section 2251, 2251A, 2252, 2252A, or 2260 of title 18, United States Code, has occurred. The report could include information concerning: visual depictions of child pornography; the identity of persons or screen names of persons transmitting or receiving child pornography; or requests by persons to receive child pornography. Although not required, the report may include additional information or material developed by the provider. However, this does not require a provider of electronic communication services or remote computing services to engage in the monitoring of any user, subscriber, or customer of that provider, or the content of any communication of any such person.

(b) The report to the Federal Bureau of Investigation may be made telephonically to the local number for the FBI, which can be retrieved from the Web site ''www.FBI.gov.'' The report to the U.S. Customs Service may be made telephonically by calling the local number for the U.S. Customs Service or by calling ''1–800–BE ALERT.''

(c) Providers are advised to consult the requirements of the Electronic Communications Privacy Act of 1986, Public Law 99–508, 100 Stat. 1848, which enacted sections 1367, 2521, 2701 to 2710, 3117, and 3121 to 3126 of title 18, United States Code, and amended section 2510 and sections 2232, 2511 to 2513, and 2516 to 2520 of title 18, United States Code.

§ 81.15 Definitions.

The term ''child pornography'' has the meaning given the term in section 2256 of title 18, United States Code. The term ''electronic communication service'' has the meaning given the term in section 2510 of title 18, United States Code; and the term ''remote computing service'' has the meaning given the term in section 2711 of title 18, United States Code.

Dated: May 20, 1999.

Janet Reno,

Attorney General.

[FR Doc. 99–13427 Filed 5–25–99; 8:45 am]

BILLING CODE 4410–14–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–161, RM–9565]

Radio Broadcasting Services; Hershey, NE

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Mountain West Broadcasting to allot Channel 297C1 to Hershey, NE, as the community's first local aural service. Channel 297C1 can be allotted to Hershey in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates 41–09–30 NL; 101–00–00 WL.

DATES: Comments must be filed on or before July 6, 1999, and reply comments on or before July 21, 1999.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW, Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Victor A. Michael, Jr., President, Mountain West Broadcasting, 6807 Foxglove Drive, Cheyenne, WY 82009 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–161, adopted May 5, 1999, and released May 14, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 99–13255 Filed 5–25–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–162, RM–9566]

Radio Broadcasting Services; Sutherland, NE

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Mountain West Broadcasting to allot Channel 264C1 to Sutherland, NE, as the community's first local aural service. Channel 264C1 can be allotted to Sutherland in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates 41–09–30 NL; 101–07–36.

DATES: Comments must be filed on or before July 6, 1999, and reply comments on or before July 21, 1999.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW, Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Victor A. Michael, Jr., President, Mountain West Broadcasting, 6807 Foxglove Drive, Cheyenne, WY 82009 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–162, adopted May 5, 1999, and released May 14, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 99–13256 Filed 5–25–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–163, RM–9595]

Radio Broadcasting Services; Jackpot, NV

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Mountain West Broadcasting to allot Channel 287C1 to Jackpot, NV, as the community's first local aural service. Channel 287C1 can be allotted to Jackpot in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates 41–59–06 NL; 114–40–18 WL. Petitioner is requested to provide further information demonstrating that Jackpot is a community for allotment purposes.

DATES: Comments must be filed on or before July 6, 1999, and reply comments on or before July 21, 1999.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW, Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Victor A. Michael, Jr., President, Mountain West Broadcasting, 6807 Foxglove Drive, Cheyenne, WY 82009 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–163, adopted May 5, 1999, and released May 14, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 99–13257 Filed 5–25–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–164, RM–9598]

Radio Broadcasting Services; Mitchell, NE

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Mountain West Broadcasting to allot Channel 257A to Mitchell, NE, as the community's first local aural service. Channel 257A can be allotted to Mitchell in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates 41–56–36 NL; 103–48–30 WL.

DATES: Comments must be filed on or before July 6, 1999, and reply comments on or before July 21, 1999.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW, Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Victor A. Michael, Jr., President, Mountain West Broadcasting,

6807 Foxglove Drive, Cheyenne, WY 82009 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–164, adopted May 5, 1999, and released May 14, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 99–13258 Filed 5–25–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–165, RM–9599]

Radio Broadcasting Services; Lovelock, NV

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Mountain West Broadcasting to allot Channel 292C1 to Lovelock, NV, as the community's first local aural service. Channel 292C1 can be allotted to Lovelock in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates 40–10–48 NL; 118–28–24 WL.

DATES: Comments must be filed on or before July 6, 1999, and reply comments on or before July 21, 1999.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW, Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Victor A. Michael, Jr., President, Mountain West Broadcasting, 6807 Foxglove Drive, Cheyenne, WY 82009 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–165, adopted May 5, 1999, and released May 14, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 99–13259 Filed 5–25–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–166, RM–9600]

Radio Broadcasting Services; Elko, NV

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Mountain West Broadcasting to allot Channel 248C1 to Elko, NV, as the community's fifth local aural service. Channel 248C1 can be allotted to Elko in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates 40–49–48 NL; 115–45–36 WL.

DATES: Comments must be filed on or before July 6, 1999, and reply comments on or before July 21, 1999.

ADDRESSES: Federal Communications Commission, 445 12th Street, S.W., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Victor A. Michael, Jr., President, Mountain West Broadcasting, 6807 Foxglove Drive, Cheyenne, WY 82009 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–166, adopted May 5, 1999, and released May 14, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, S.W., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 99–13260 Filed 5–25–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–170; RM–9545]

Radio Broadcasting Services; Oceanside and Encinitas, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Compass Radio of San Diego, Inc., requesting the reallotment of Channel 271B from Oceanside to Encinitas, California, as that community's first local aural transmission service and modification of its license for Station KXST(FM) accordingly. The Commission also requests comments on whether pre-1964 grandfathered short-spaced stations and pre-1989 grandfathered short-spaced Class A stations should be allowed to change their community of license if no change in the licensed technical facilities is requested. Coordinates used for Channel 271B at Encinitas, California, are 33–06–40 NL; 117–12–05 WL. This site, which is the licensed site of Station KXST(FM), will maintain the present grandfathered short-spacings to Station KGB–FM, Channel 268B, San Diego, and to Station KSCA(FM), Channel 270B, Glendale, California.

DATES: Comments must be filed on or before July 6, 1999, and reply comments on or before July 21, 1999.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Richard R. Zaragoza, and Jason S. Roberts, Esqs., Fisher, Wayland, Cooper, Leader & Zaragoza, L.L.P., 2001 Pennsylvania Avenue, NW., Suite 400, Washington, DC 20006.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–170, adopted May 5, 1999, and released May 14, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 99–13261 Filed 5–25–99; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register

Vol. 64, No. 101

Wednesday, May 26, 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.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Board for International Food and Agricultural Development One Hundred and Twenty-Ninth Meeting; Notice of Meeting

Pursuant to the Federal Advisory Committee Act, notice is hereby given of the one hundred and twenty-ninth meeting of the Board for International Food and Agricultural Development (BIFAD). The meeting will be held from 9:00 a.m. to 5:00 p.m. on June 10 and from 9:00 a.m. to 4:00 p.m. on June 11, 1999, in the USAID Public Information Center, Suite M.1, Mezzanine Level, Ronald Reagan Building, located at 1300 Pennsylvania Avenue, N.W., Washington, DC 20523.

As part of its agenda, BIFAD will discuss the role of biotechnology and its importance to developing countries: research and development; intellectual property rights; biosafety; biotechnology development strategies; and the role of the private sector and future developments. During this meeting, Partnerships for Food Industry Development, a proposed USAID program whose objective is to help developing and transition economy countries increase food quality, processing and marketing will be covered. BIFAD will also discuss revisions to the Title XII legislation and the establishment of a joint committee to review priorities for and results of USAID/university collaboration.

Those wishing to attend the meeting should contact Mr. George Like at the Agency for International Development, Ronald Reagan Building, Office of Agriculture and Food Security, 1300 Pennsylvania Avenue, N.W., Room 2.11–072, Washington, DC 20523–2110, telephone (202) 712–1436, fax (202) 216–3010 or internet [glike@usaid.gov] with your full name.

Anyone wishing to obtain additional information about BIFAD should contact Mr. Tracy Atwood the Designated Federal Officer for BIFAD. Write him in care of the Agency for International Development, Ronald Reagan Building, Office of Agriculture and Food Security, 1300 Pennsylvania Avenue, N.W., Room 2.11–005, Washington, DC 20523–2110, telephone him at (202) 712–5571 or fax (202) 216–3010.

Tracy Atwood,

USAID Designated Federal Officer (Deputy Director, Office of Agriculture and Food Security, Economic Growth Center, Bureau for Global Programs).

[FR Doc. 99–13268 Filed 5–25–99; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 99–013N]

International Standard-Setting Activities

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice informs the public of the sanitary and phytosanitary standard-setting activities of the Codex Alimentarius Commission (Codex), in accordance with section 491 of the Trade Agreements Act of 1979, as amended, and the Uruguay Round Agreements Act, Pub. L. 103–465, 108 Stat. 4809. It also provides a list of other standard-setting activities of Codex, including commodity standards, guidelines, codes of practice, and revised texts. This notice, which covers the time periods from June 1, 1998, to May 31, 1999, and June 1, 1999, to May 31, 2000, seeks comments on standards currently under consideration and recommendations for new standards.

ADDRESSES: Submit any written comments to: FSIS Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 102, Cotton Annex, Washington, DC 20250–3700. Please state that your comments refer to Codex and, if your comments relate to specific Codex committees, please identify those committees in your comments and submit a copy of your comments to the delegate from that particular committee. All comments submitted will be available for public inspection in the Docket Clerk's Office between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: F. Edward Scarbrough, Ph.D., United States Manager for Codex Alimentarius, U.S. Department of Agriculture, Office of the Undersecretary for Food Safety, Room 4861, South Agriculture Building, 1400 Independence Avenue, SW, Washington, DC 20250–3700; (202) 205–7760. For information pertaining to particular committees, the delegate of that committee may be contacted. (A complete list of U.S. delegates and alternate delegates can be found in *Attachment* 2 to this notice.)

SUPPLEMENTARY INFORMATION:

Background

The World Trade Organization (WTO) was established on January 1, 1995, as the common international institutional framework for the conduct of trade relations among its members in matters related to the Uruguay Round Trade Agreements. The WTO is the successor organization to the General Agreement on Tariffs and Trade (GATT). U.S. membership in the WTO was approved and the Uruguay Round Agreements Act was signed into law by the President on December 8, 1994. The Uruguay Round Agreements became effective, with respect to the United States, on January 1, 1995. Pursuant to section 491 of the Trade Agreements Act of 1979, as amended, the President is required to designate an agency to be responsible for informing the public of the sanitary and phytosanitary (SPS) standard-setting activities of each international standard-setting organization, Codex, International Office of Epizootics, and the International Plant Protection Convention. The President, pursuant to Proclamation No. 6780 of March 23, 1995 (60 FR 15845), designated the U.S. Department of Agriculture as the agency responsible for informing the public of sanitary and phytosanitary standard-setting activities of each international standard-setting organization. The Secretary of Agriculture has delegated to the Administrator, Food Safety and Inspection Service (FSIS), the responsibility to inform the public of the SPS standard-setting activities of Codex. The FSIS Administrator has, in turn, assigned the responsibility for informing the public of the SPS standard-setting activities of Codex to

the Office of U.S. Codex Alimentarius, FSIS.

Codex was created in 1962 by two U.N. organizations, the Food and Agriculture Organization (FAO) and the World Health Organization (WHO). Codex is the principal international organization for encouraging fair international trade in food and protecting the health and economic interests of consumers. Through adoption of food standards, codes of practice, and other guidelines developed by its committees and by promoting their adoption and implementation by governments, Codex seeks to ensure that the world's food supply is sound, wholesome, free from adulteration, and correctly labeled. In the United States, the United States Department of Agriculture (USDA); the Food and Drug Administration (FDA), Department of Health and Human Services (HHS), and the Environmental Protection Agency (EPA) manage and carry out U.S. Codex activities.

As the agency responsible for informing the public of the sanitary and phytosanitary standard-setting activities of Codex, FSIS publishes this notice in the **Federal Register** annually. Attachment 1 (Sanitary and Phytosanitary Activities of Codex) sets forth the following information:

1. The sanitary or phytosanitary standards under consideration or planned for consideration; and

2. For each sanitary or phytosanitary standard specified:

a. A description of the consideration or planned consideration of the standard;

b. Whether the United States is participating or plans to participate in the consideration of the standard;

c. The agenda for United States participation, if any; and

d. The agency responsible for representing the United States with respect to the standard.

To Obtain Copies of those Standards Listed in Attachment 1 that are Under Consideration by Codex, Please Contact the Codex Delegate or the Office of U.S. Codex Alimentarius

This notice also solicits public comment on those standards that are under consideration and on recommendations for new standards. The delegate, in conjunction with the responsible agency, will take the comments received into account in participating in the consideration of the standards and in proposing matters to be considered by Codex.

The United States' delegate will facilitate public participation in the United States Government's activities relating to Codex Alimentarius. The United States' delegate will maintain a list of individuals, groups, and organizations that have expressed an interest in the activities of the Codex committees and will disseminate information regarding United States' delegation activities to interested parties. This information will include the current status of each agenda item; the United States Government's position or preliminary position on the agenda items; and the time and place of planning meetings and debriefing meetings following Codex committee sessions. Please notify the appropriate U.S. delegate or the Office of U.S. Codex Alimentarius, Room 4861, South Agriculture Building, 1400 Independence Avenue, SW, Washington, DC 20250–3700, if you would like to receive information about specific committees.

The information provided in *Attachment* 1 describes the status of Codex standard-setting activities by the Codex Committees for the time periods from June 1, 1998 to May 31, 1999, and June 1, 1999 to May 31, 2000. In addition, the following attachments are included:

Attachment 2 List of U.S. Codex Officials (includes U.S. delegates and alternate delegates).

Attachment 3 Timetable of Codex Sessions (June 1998 through May 2000)

Attachment 4 Definitions for the Purpose of Codex Alimentarius

Attachment 5 Part 1-Uniform Procedure for the Elaboration of Codex Standards and Related Texts Part 2-Uniform Accelerated Procedure for the Elaboration of Codex Standards and Related Texts

Attachment 6 Nature of Codex Standards

Done at Washington, DC on: May 20, 1999.

F. Edward Scarbrough,

United States Manager for Codex Alimentarius.

Attachment 1: Sanitary and Phytosanitary Activities of Codex

Codex Alimentarius Commission and Executive Committee

The Codex Alimentarius Commission will hold its Twenty-third Session June 28–July 3, 1999 in Rome, Italy. At that time it will consider the standards, codes of practice, and related matters brought to its attention by the general subject committees, commodity committees, and member delegations.

Prior to the Commission meeting, the Executive Committee met in June 1998 and will meet June 24–25, 1999. It is composed of the chairperson, vice-chairpersons and six members elected from the Commission, one from each of the following geographic regions: Africa, Asia, Europe, Latin America and the Caribbean, North America, and South-West Pacific. At its session in June 1999, it will consider the following items:

- Report of the financial situation of the Joint FAO/WHO Food Standards Programme for 1998/99 and 2000/01;
- Principles of Risk Analysis;
- Matters Arising from Reports of Codex Committees;
- Designation of Host Governments for Codex Committees and *ad hoc* Intergovernmental Task Forces;
- Review of Criteria for New Work and Guidelines for the Establishment of ''Inclusive'' Standards; and
- Provision of Documentation, Translation and Interpretation Services for Codex Committees.

Responsible Agency: USDA/FSIS
U.S. Participation: Yes

Codex Committee on Residues of Veterinary Drugs in Foods

The Codex Committee on Residues of Veterinary Drugs determines priorities for the consideration of residues of veterinary drugs in foods and recommends Maximum Residue Limits (MRLs) for veterinary drugs. A Codex Maximum Limit for Residues of Veterinary Drugs (MRLVD) is the maximum concentration of residue resulting from the use of a veterinary drug (expressed in mg/kg or ug/kg on a fresh weight basis) that is recommended by the Codex Alimentarius Commission to be permitted or recognized as acceptable in or on a food.

An MRLVD is based on the type and amount of residue considered to be without any toxicological hazard for human health as expressed by the Acceptable Daily Intake (ADI)*, or on the basis of a temporary ADI that utilizes an additional safety factor. An MRLVD also takes into account other relevant public health risks as well as food technological aspects.

When establishing an MRLVD, consideration is also given to residues that occur in food of plant origin and/or the environment. Furthermore, the MRLVD may be reduced to be consistent with good practices in the use of veterinary drugs and to the extent that practical analytical methods are available.

- Acceptable Daily Intake (ADI): An estimate by the Joint FAO/WHO Expert Committee on Food Additives (JECFA) of the amount of a veterinary drug, expressed on a body weight basis, that can be ingested daily over a lifetime without appreciable health risk (standard man = 60 kg).

The following matters, contained in ALINORM 99/31, will be considered by the Codex Alimentarius Commission at its 23rd Session:

To be considered at Step 8:

Alpha-Cypermethrin/Cypermethrin
Azaperone
Bovine Somatatropins
Cetiofur
Diclazuril
Dihydrostreptomycin/Streptomycin
Febantel/Febendazole/Oxyfendazole
Neomycin
Spectinomycin
Tilmicosin

To be considered at Step 5/8:

Febantel/Febendazole/Oxyfendazole
Fluazuron
Nicarbazin
Benzylpenicillin/Procaine Benzylpenicillin
Spectinomicin
Moxidectin

To be considered at Step 5:

Chlorotetracyline/Oxytetracycline/Tetracycline
Cyfluthrin
Danofloxacin
Eprinomectin
Flumequine
Imidocarb
Sarafloxicin

Priority List of Veterinary Drugs Requiring Evaluation or Reevaluation

- Replacement of Codex MRLs for Benzylpenicillin with MRLs for Benzylpenicillin/Procaine Benzylpenicillin

The Committee is continuing work on:

- Draft Maximum Residue Limits for Veterinary Drugs;
- Risk Analysis in the Codex Committee on Residues of Veterinary Drugs in Foods;
- Guidelines on Residues at Injection Sites;
- Guidelines on the Control of Veterinary Drug Residues in Milk and Milk Products;
- Draft Code of Practice for Good Animal Feeding; and
- Methods of Analysis and Sampling Issues.

Responsible Agency: HHS/FDA; USDA/FSIS
U.S. Participation: Yes

Food Additives and Contaminants

Codex Committee on Food Additives and Contaminants

The Codex Committee on Food Additives and Contaminants (CCFAC) (a) establishes or endorses permitted maximum or guideline levels for individual food additives, contaminants, and naturally occurring toxicants in food and animal feed; (b) prepares priority lists of food additives and contaminants for toxicological evaluation by the Joint FAO/WHO Expert Committee on Food Additives (JECFA); (c) recommends specifications of identity and purity for food additives for adoption by the Commission; (d) considers methods of analysis for food additives and contaminants; and (e) considers and elaborates standards and codes for related subjects such as labeling of food additives when sold as such and food irradiation. The 31st Session of the CCFAC met March 22–26, 1999, in The Hague, The Netherlands. The plenary of the 32nd Session of the CCFAC is tentatively scheduled for March 20–24, 2000, in Beijing, the People's Republic of China. The following matters contained in ALINORMs 99/12 and 99/12A are under consideration by the CCFAC.

Risk Analysis

The Discussion Paper entitled ''Application of Risk Analysis Principles to the Work of the Codex Committee on Food Additives and Contaminants (CCFAC) and the Joint FAO/WHO Expert Committee on Food Additives (JECFA)'' will be forwarded to the 53rd JECFA for comment. In response to the discussion by the 31st CCFAC and the recommendations of the JECFA, the Discussion Paper will be revised by the U.S. and circulated for comment and further discussion by the 32nd CCFAC (2000).

Food Additives

- Annex A (Guidelines for the Estimation of Appropriate Levels of Use of Food Additives) to the Preamble of the General Standard for Food Additives (GSFA) was forwarded to the CAC for adoption at Step 5. Table 1 of the GSFA (Additives Permitted for Use Under Specified Conditions in Certain Food Categories or Individual Food Items) was forwarded to CAC with recommendation for adoption of specific provisions at Step 8 or maintaining specific provisions at Step 6; (see Table 1, below). The 31st CCFAC also proposed draft revisions to the Preamble of the GSFA at Step 3 of Codex's uniform accelerated procedure.
- The 31st CCFAC agreed to reestablish the *ad hoc* working group on the GSFA for its 32nd Session under the chairmanship of the U.S. This *ad hoc* working group is expected to meet prior to the plenary session of the 32nd CCFAC.
- A discussion paper on the use of colors in foods will be revised for further discussion by the 32nd CCFAC.

Food Additive Specifications

- Specifications for the following food additives are recommended by the CCFAC for adoption by the Twenty-third Session of the Codex Commission: acetone, agar, alginic acid, aluminium powder, ammonium alginate, calcium alginate, calcium gluconate, calcium propionate, calcium sorbate, canthaxanthin, carbon dioxide, carnauba wax, carthamus red, carthamus yellow, diacetyltartaric and fatty acid esters of glycerol, dichloromethane, ethyl hydroxyethyl cellulose, ethyl *p*-hydroxybenzoate, gellan gum, glucono *delta*-lactone, hexanes, 4-hexylresorcinol, hydrogenated poly-1-decene, isoamyl acetate, isobutanol, maltitol syrup, methyl *p*-hydroxybenzoate, microcrystalline wax, mineral oil (medium and low viscosity), mixed carotenoids, modified starches, petroleum jelly, polydextrose, polyglycitol syrup, potassium alginate, potassium gluconate, potassium propionate, potassium sorbate, propane-2-ol, propionic acid, propyl *p*-hydroxybenzoate, propylene glycol, propylene glycol alginate, propylene glycol esters of fatty acids, salatrim, sodium alginate, sodium carboxymethyl cellulose enzymatically hydrolyzed, sodium gluconate, sucroglycerides, sulfur dioxide, and *tertiary*-butylhydroquinone.
- Specifications for the following flavoring agents are recommended by the CCFAC for adoption by the Twenty-third Session of the Codex Commission, numbers in parentheses are the Joint FAO/WHO Expert Committee on Food Additives' (JECFA) flavor identification numbers: allyl cyclohexane propionate (13), ethyl octanoate (33), ethyl nonanoate (34), isoamyl acetate (43), isoamyl butyrate (45), isoamyl isobutyrate (49), isoamyl isovalerate (50), citronellyl formate (53), geranyl formate (54), neryl formate (55), rhodinyl formate (56), citronellyl acetate (57), neryl acetate (59), rhodinyl acetate (60), citronellyl propionate (61), geranyl propionate (62), *cis*-3,7-dimethyl-2,6-octadien-1-yl propanoate (63), citronellyl butyrate (65), geranyl butyrate (66), neryl butyrate (67), rhodinyl butyrate (68), citronellyl isobutyrate (71), neryl isobutyrate (73), neryl isovalerate (76), formic acid (79), acetaldehyde (80), acetic acid (81), propyl alcohol (82), propionaldehyde (83), propionic acid (84), butyl alcohol (85), butyraldehyde (86), butyric acid (87), amyl alcohol (88), valeraldehyde (89), valeric acid (90), hexyl alcohol (91), hexanal (92), hexanoic acid (93), heptyl alcohol (94), heptanal (95),

heptanoic acid (96), 1-octanol (97), octanal (98), octanoic acid (99), nonyl alcohol (100), nonanal (101), nonanoic acid (102), 1-decanol (103), decanal (104), decanoic acid (105), undecyl alcohol (106), undecanal (107), undecanoic acid (108), lauryl alcohol (109), lauric aldehyde (110), lauric acid (111), myristaldehyde (112), myristic acid (113), 1-hexadecanol (114), palmitic acid (115), stearic acid (116), propyl formate (117), butyl formate (118), *n*-amyl formate (119), hexyl formate (120), octyl formate (122), *cis*-3-hexenyl formate (123), methyl acetate (125), propyl acetate (126), butyl acetate (127), hexyl acetate (128), heptyl acetate (129), octyl acetate (130), nonyl acetate (131), decyl acetate (132), lauryl acetate (133), *cis*-3-hexenyl acetate (134), *trans*-3-heptenyl acetate (135), 10-undecen-1-yl acetate (136), isobutyl acetate (137), 2-methylbutyl acetate (138), acetone (139), methyl propionate (141), propyl propionate (142), butyl propionate (143), hexyl propionate (144), octyl propionate (145), decyl propionate (146), *cis*-3 and *trans*-2-hexenyl propionate (147), isobutyl propionate (148), methyl butyrate (149), propyl butyrate (150), butyl butyrate (151), *n*-amyl butyrate (152), hexyl butyrate (153), *cis*-3-hexenyl butyrate (157), isobutyl butyrate (158), methyl valerate (159), butyl valerate (160), propyl hexanoate (161), butyl hexanoate (162), *n*-amyl hexanoate (163), hexyl hexanoate (164), isobutyl hexanoate (166), methyl heptanoate (167), *n*-amyl heptanoate (170), methyl octanoate (173), *n*-amyl octanoate (174), hexyl octanoate (175), methyl nonanoate (179), methyl laurate (180), butyl laurate (181), methyl myristate (183), methyl isobutyrate (185), ethyl isobutyrate (186), propyl isobutyrate (187), butyl isobutyrate (188), hexyl isobutyrate (189), heptyl isobutyrate (190), *trans*-3-heptenyl 2-methyl propanoate (191), octyl isobutyrate (192), dodecyl isobutyrate (193), isobutyl isobutyrate (194), methyl isovalerate (195), ethyl isovalerate (196), propyl isovalerate (197), butyl isovalerate (198), hexyl 3-methylbutanoate (199), octyl isovalerate (200), nonyl isovalerate (201), 3-hexenyl 3-methylbutanoate (202), 2-methylpropyl 3-methylbutyrate (203), methyl 2-methylbutyrate (205), ethyl 2-methylbutyrate (206), *n*-butyl 2-methylbuytyrate (207), hexyl 2-methylbutanoate (208), octyl 2-methylbutyrate (209), 2-methylbutyl 2-methylbutyrate (212), ethyl 2-methyl pentanoate (214), methyl 4-methylvalerate (216), *trans*-anethole (217), citric acid (218), 4-hydroxybutyric acid lactone (*gamma*-butyrolactone) (219), 4-hydroxy-3-pentenoic acid (220), 4-hydroxy-3-pentenoic acid lactone (221), 5-ethyl-3-hydroxy-4-methyl-2(5H)-furanone (222), *gamma*-hexalactone (223), *delta*-hexalactone (224), *gamma*-heptalactone (225), *gamma*-octalactone (226), 4,4-dibutyl-*gamma*-butyrolactone (227), *delta*-octalactone (228), *gamma*-nonalactone (229), hydroxynonanoic acid, *delta*-lactone (230), *gamma*-decalactone (231), *delta*-decalactone (232), *gamma*-undecalactone (233), 5-hydroxyundecanoic acid lactone (234), *gamma*-dodecalactone (235), *delta*-Dodecalactone (236), 6-hydroxy-3,7-dimethylpctanoic acid lactone (237), *delta*-tetradecalactone (238), omega-6-hexadecenlactone (240), *epsilon*-dodecalactone (242), 4,5-dimethyl-3-hydroxy-2,5-dihydrofuran-2-one (243), 5-hydroxy-2,4-decadienoic acid *delta*-lactone (245), 5-hydroxy-2-decenoic acid *delta*-lactone (246), *gamma*-methyldecalactone (250), isobutyl alcohol (251), isobutyraldehyde (252), isobutyric acid (253), 2-methylbutyraldehyde (254), 2-methylbutyric acid (255), 2-ethylbutyraldehyde (256), 2-ethylbutyric acid (257), 3-methylbutyraldehyde (258), isovaleric acid (259), 2-methylvaleric acid (261), 3-methylpentanoic acid (262), 3-methyl-1-pentanol (263), 4-methylpentanoic acid (264), 2-methylhexanoic acid (265), 5-methylhexanoic acid (266), 2-ethyl-1-hexanoic acid (267), 3,5,5-trimethyl-1-hexanol (268), 3,5,5-trimethylhexanal (269), 3,7-dimethyl-1-octanol (272), 4-methylnonanoic acid (274), 2-methylundecanal (275), isopropyl alcohol (277), 2-butanone (278), 2-pentanone (279), 2-pentanol (280), 3-hexanone (281), 3-hexanol (282), 2-heptanone (283), 2-heptanol (284), 3-heptanone (285), 3-heptanol (286), 4-heptanone (287), 2-octanone (288), 2-octanol (289), 3-octanone (290), 3-octanol (291), 2-nonanone (292), 2-nonanol (293), 3-nonanone (294), 3-decanol (295), 2-undecanone (296), 2-undecanol (297), 2-tridecanone (298), 4-methyl-2-pentanone (301) 2,6-dimethyl-4-heptanone (302), 2,6-dimethyl-4-heptanol (303), isopropyl acetate (305), isopropyl butyrate (307), isopropyl isobutyrate (309), isopropyl isovalerate (310), isopropyl myristate (311), isopropyl tiglate (312), 3-octyl acetate (313), 4-pentenoic acid (314), *cis*-3-hexen-1-ol (315), 4-hexen-1-ol (318), 4-heptenal (320), *cis*-3-octen-1-ol (321), *cis*-5-octen-1-ol (322), *cis*-5-otenal (323), *cis*-6-nonen-1-ol (324), *cis*-6-nonenal (325), 4-decenal (326), 9-decenoic acid (328), 10-undecenal (330), 10-undecenoic acid (331), linoleic acid (332), ethyl 3-hexenoate (335), *cis*-3-hexenyl *cis*-3-hexenoate (336), ethyl 10-undecenoate (343), ethyl oleate (345), methyl linoleate and methyl linolenate (mix) (346), 2,6-dimethyl-5-heptenal (349), ethyl 2-methyl-4-pentenoate (351), methyl 3, 7-dimethyl-6-octenoate (354), linalool (356), tetrahydrolinalool (357), linalyl formate (358), linalyl acetate (359), linalyl propionate (360), linalyl butyrate (361), linalyl isobutyrate (362), linalyl isovalerate (363), linalyl hexanoate (364), *alpha*-terpineol (366), terpinyl acetate (368), terpinyl propionate (369), *p*-menthan-2-one (375), dihydrocarveol (378), dihydrocarvyl acetate (379), (+)carvone (380a), (-)carvone (380b), carveol (381), carvyl acetate (382), *beta*-damascone (384), *alpha*-damascone (385), *delta*-damascone (386), damascenone (387), *alpha*-ionone (388), *beta*-ionone (389), *alpha*-ionol (391), dihydro-alpha-ionone (393), dihydro-*beta*-ionol (395), dehydrodihydroionone (396), dehydrodihydroinol (397), methyl *alpha*-ionone (398), methyl *beta*-ionone (399), allyl *alpha*-ionone, (401), *alpha*-irone (403), *alpha*-iso-methylionone (404), acetoin (405), 2,3-pentanedione (410), 2,3-hexanedione (412), 3,4-hexanedione (413), 2,3-heptanedione (415), ethylcyclopentenolone (419), 3,4-dimethyl-1,2-cyclopentanedione (420), 3-ethyl-2-hydroxy-4-methylcyclopent-2-en-1-one (422), 5-ethyl-2-hydroxy-3-methylcyclopent-2-en-1-one (423), 1-metyl-2,3-cyclohexadione (425), 2-hydrox-3,5,5-trimethyl-2-cyclohexen-1-one (426), menthol (427), menthone (429), (±)isomenthone (430), menthyl acetate (431), menthyl isovalerate (432), (-)menthyl lactate (433), piperitone (435), *gamma*-lactone (437), 4-carvomenthenol (439), (-)menthol ethylene glycol carbonate (443), (-)menthol 1-and 2-propylene glycol carbonate (444), (-)menthone 1, 2-glycerol ketal (445), (±)menthone 1,2-glycerol ketal 446), mono-menthyl succinate (447), 1-ethylhexyl tiglate (3-octyl tiglate) (448)

- Specifications for the following food additives are recommended by the CCFAC for adoption by the Twenty-third Session of the CAC after changes considered editorial have been made: gum arabic and sodium propionate.
- Specifications for the following flavoring agents are recommended by the CCFAC for adoption by the Twenty-third Session of the CAC after changes considered editorial have been made: geranyl acetate (58), and isobutyl formate (124).
- The 31st CCFAC agreed to reestablish the *ad hoc* working group for food additive specifications for its 32nd Session under the chairmanship of the

U.S. This *ad hoc* working group is expected to meet prior to the plenary session of the 32nd CCFAC.

Contaminants

- Methodology and Principles for Exposure Assessment in the Codex General Standard for Contaminants and Toxins in Food (paper to be revised for consideration by the 32nd CCFAC).
- Maximum Levels and Sampling Plan for Aflatoxins in Raw Peanuts for further processing (forwarded to CAC for adoption at Step 8). Maximum Level for aflatoxin M_1 in Milk (forwarded to CAC for adoption at Step 8).
- Position Paper on Ochratoxin A (paper to be revised for consideration by the 32nd CCFAC). Draft Maximum Levels for Ochratoxin A in Cereals and Cereal Products to be circulated for comment and further consideration by the 32nd CCFAC at Step 3.
- Position Paper on Patulin (paper to be revised for consideration by the 32nd CCFAC). Draft Maximum Level for Patulin in Apple Juice and the Apple Juice Ingredient in other Beverages was forwarded to the CAC for adoption at Step 5.
- Position Paper on Zearalenone (Paper will be finalized and circulated for comment and consideration by the 32nd CCFAC.)
- Draft Code of Practice for Source Directed Measures to Reduce Contamination of Foodstuffs (paper to be revised for consideration at Step 3 by the 32nd CCFAC).
- Draft Maximum Levels for Lead (Revised levels to be circulated for comment and consideration at Step 6 by the 32nd CCFAC).
- Discussion Paper on Cadmium (Paper to be revised and circulated for comment and consideration by the 32nd CCFAC). Draft Maximum Levels for Cadmium for Cereals, Pulses and Legumes to be circulated for comment at Step 6. (Proposed draft maximum levels for Cadmium in other foods to be circulated at Step 3).
- Position Paper on Arsenic (Paper to be finalized and will form the basis of future work when routine methodology becomes available to determine toxic arsenic in food).
- Maximum Levels for Tin in Canned Foods (Draft maximum levels for canned foods were forwarded to the CAC for adoption at Step 5).
- Discussion Paper on Dioxins (Paper to be revised for circulation and comment by the 32nd CCFAC).
- Section 3.2 (Health Related Limits for Certain Substances) of the Codex Standard for Natural Mineral Waters. The 32nd CCFAC agreed that Section 3.2 of this Codex Standard should be aligned with the WHO Guideline levels for Drinking Water Quality and forwarded this recommendation to the CAC.
- The 31st CCFAC agreed to reestablish the *ad hoc* working group for contaminants for its 32nd Session under the chairmanship of Denmark. This *ad hoc* working group is expected to meet prior to the plenary session of the 32nd CCFAC.

Future Work

The CCFAC agreed to propose the following as future work for the Committee: (1) Revision of the Codex General Standard for Irradiated Foods (pending agreement by CAC); (2) discussion paper on processing aids; (3) discussion paper on fumonisins; (4) Code of Practice for the Prevention of Contamination by Zearalenone (pending agreement by CAC).

Responsible Agency: HHS/FDA
U.S. Participation: Yes

General Standard for Food Additives

For the purposes of Codex, a food additive means any substance not normally consumed as a food by itself and not normally used as a typical ingredient in the food, whether or not it has nutritive value, the intentional addition of which to food for a technological (including organoleptic) purpose in the manufacture, processing, preparation, treatment, packing, packaging, transport, or holding of such food results, or may be reasonably expected to result (directly or indirectly), in it or its by-products becoming a component of or otherwise affecting the characteristics of such foods. The term food additive does not include ''contaminants'' or substances added to food for maintaining or improving nutritional qualities.

The General Standard for Food Additives (GSFA) will set forth maximum levels of use of food additives in various foods and food categories. The maximum levels will be based on the food additive provisions of previously established Codex commodity standards, as well as on the use of the additives in non-standardized foods.

Only those food additives for which an acceptable daily intake (ADI) has been established by the Joint FAO/WHO Expert Committee on Food Additives (JECFA) are included in the General Standard for Food Additives (GSFA) at this time. All of the additives that have been adopted by the CAC at Step 8 or are currently under consideration in the draft GFSA are listed below. (See ALINORM 99/12A and CX/FAC 99/6.)

Table 1

Acesulfame Potassium (Step 6)
Acetic Acid (Adopted at Step 8)
Acetic and Fatty Acid Esters of Glycerol (Adopted at Step 8)
Acetylated Distarch Adipate (Adopted at Step 8)
Acetylated Distarch Phosphate (Adopted at Step 8)
Acid Treated Starch (Adopted at Step 8)
Adipic Acid (Step 6)
Agar (Adopted at Step 8)
Alginic Acid (Adopted at Step 8)
Alitame (Step 6)
Alkaline Treated Starch (Adopted at Step 8)
Allura Red AC (Step 6)
Alpha-Amylase (Aspergillus oryzae, var.) (Forwarded for adoption at Step 8)
Alpha-Amylase (Bacillus megaterium expressed in Bacillus subtilis) (Adopted at Step 8)
Alpha-Amylase (Bacillus stearothermophilus expressed in Bacillus subtilis) (Adopted at Step 8)
Alpha-Amylase (Bacillus stearothermophilus) (Adopted at Step 8)
Alpha-Amylase (Bacillus subtilis) (Adopted at Step 8)
Alpha-Tocopherol (Step 6)
Aluminium Ammonium Sulfate (Step 6)
Aluminium Silicate (Adopted at Step 8)
Amaranth (Step 6)
Ammonium Acetate (Adopted at Step 8)
Ammonium Adipate (Step 6)
Ammonium Alginate (Adopted at Step 8)
Ammonium Carbonate (Adopted at Step 8)
Ammonium Chloride (Adopted at Step 8)
Ammonium Citrate (Adopted at Step 8)
Ammonium Hydrogen Carbonate (Adopted at Step 8)
Ammonium Hydroxide (Adopted at Step 8)
Ammonium Lactate (Adopted at Step 8)
Ammonium Polyphosphate (Step 6)
Annatto Extracts (Includes Bixin and Norbixin) (Step 6)
Ascorbic Acid (Adopted at Step 8)
Ascorbyl Palmitate (Step 6)
Ascorbyl Stearate (Step 6)
Aspartame (Step 6)
Azodicarbonamide (Forwarded for adoption at Step 8)
Azorubine (Step 6)
Beeswax, White and Yellow (Step 6)
Beet Red (Adopted at Step 8)
Benzoic Acid (Step 6)
Benzoyl Peroxide (Step 6)
Bleached Starch (Adopted at Step 8)
Bone Phosphate (Step 6)
Brilliant Black PN (Step 6)
Brilliant Blue FCF (Step 6)
Bromelain (Adopted at Step 8)

Brown HT (Step 6)
Butylated Hydroxyanisole (BHA) (Step 6)
Butylated Hydroxytoluene (BHT) (Step 6)
Calcium Acetate (Adopted at Step 8)
Calcium Alginate (Adopted at Step 8)
Calcium Aluminum Silicate (Adopted at Step 8)
Calcium Benzoate (Step 6)
Calcium Carbonate (Adopted at Step 8)
Calcium Chloride (Adopted at Step 8)
Calcium Citrate (Adopted at Step 8)
Calcium Disodium Ethylene Diamine Tetra Acetate (Step 6)
Calcium Ferrocyanide (Forwarded for adoption at Step 8)
Calcium Gluconate (Adopted at Step 8)
Calcium Glutamate, Dl -L-, (Adopted at Step 8)
Calcium Guanylate, 5—(Adopted at Step 8)
Calcium Hydrogen Sulfite (Step 6)
Calcium Hydroxide (Adopted at Step 8)
Calcium Inosinate, 5—(Adopted at Step 8)
Calcium Lactate (Adopted at Step 8)
Calcium Malate, D,L—(Adopted at Step 8)
Calcium Oxide (Adopted at Step 8)
Calcium Polyphosphate (Step 6)
Calcium Propionate (Adopted at Step 8)
Calcium Ribonucleotides, 5—(Adopted at Step 8)
Calcium Silicate (Adopted at Step 8)
Calcium Sorbate (Step 6)
Calcium Stearoyl Lactylate (Step 6)
Calcium Sulfate (Adopted at Step 8)
Candelilla Wax (Step 6)
Canthaxanthin (Step 6)
Caramel Color, Class I (Adopted at Step 8)
Caramel Color, Class II (Adopted at Step 8)
Caramel Color, Class III—Ammonia Process (Forwarded for adoption at Step 8)
Caramel Color, Class IV—Ammonia Sulfite Process (Forwarded for adoption at Step 8)
Carbon Dioxide (Adopted at Step 8)
Carmines (Including aluminum & calcium lakes of carminic acid) (Step 6)
Carnauba Wax (Step 6)
Carob Bean Gum (Adopted at Step 8)
Beta-Apo-8′-Carotenoic Acid, Methyl or Ethyl Ester (Step 6)
Beta-Apo-8′-Carotenal (Step 6)
Beta-Carotene (Synthetic) (Step 6)
Carrageenan (Adopted at Step 8)
Carotenes, Natural Extracts, (Vegetable) (Step 6)
Castor Oil (Step 6)
Chlorine (Step 6)
Chlorine Dioxide (Step 6)
Chlorophyllin Copper Complex, Sodium and Potassium Salts (Step 6)
Chlorophylls (Adopted at Step 8)
Chlorophylls, Copper Complex (Step 6)
Choline Salts (Adopted at Step 8)
Citric Acid (Adopted at Step 8)
Citric and Fatty Acid Esters of Glycerol (Adopted at Step 8)
Curcumin (Step 6)
Cyclamic Acid (and Sodium, Potassium, Calcium Salts) (Step 6)
Beta-Cyclodextrin (Step 6)
Dextrins, White and Yellow, Roasted Starch (Adopted at Step 8)
Diacetyltartaric and Fatty Acid Esters of Glycerol (Step 6)
Diammonium Orthophosphate (Step 6)
Dicalcium Diphosphate (Step 6)
Dicalcium Orthophosphate (Step 6)
Dilauryl Thiodipropionate (Forwarded for adoption at Step 8)
Dimagnesium Orthophosphate (Step 6)
Dimethyl Dicarbonate (Forwarded for adoption at Step 8)
Dioctyl Sodium Sulfosuccinate (Step 6)
Diphenyl (Step 6)
Dipotassium Guanylate, 5′ (Adopted at Step 8)
Dipotassium Inosinate, 5′ (Adopted at Step 8)
Dipotassium Orthophosphate (Step 6)
Dipotassium Tartrate (Step 6)
Disodium Diphosphate (Step 6)
Disodium Ethylene Diamine Tetra Acetate (Step 6)
Disodium Guanylate, 5′ (Adopted at Step 8)
Disodium Inosinate, 5′ (Adopted at Step 8)
Disodium Orthophosphate (Step 6)
Disodium Ribonucleotides, 5′ (Step 6)
Disodium Tartrate (Step 6)
Distarch Phosphate (Adopted at Step 8)
Enzyme Treated Starch (Adopted at Step 8)
Erythorbic Acid (Adopted at Step 8)
Erythrosine (Step 6)
Ethyl Cellulose (Adopted at Step 8)
Ethyl p-Hydroxybenzoates (Step 6)
Ethyl Hydroxyethyl Cellulose (Adopted at Step 8)
Ethyl Maltol (Step 6)
Fast Green FCF (Forwarded for adoption at Step 8)
Ferric Ammonium Citrate (Forwarded for adoption at Step 8)
Ferrous Gluconate (Forwarded for adoption at Step 8)
Ferrous Lactate (Forwarded for adoption at Step 8)
Formic Acid (Step 6)
Fumaric Acid (Adopted at Step 8)
Gellan Gum (Adopted at Step 8)
Glucono Delta-Lactone (Adopted at Step 8)
Glucose Oxidase (Aspergillus niger, var.) (Adopted at Step 8)
Glutamic Acid, L- (Adopted at Step 8)
Glycerol (Adopted at Step 8)
Glycerol Ester of Wood Rosin (Forwarded for adoption at Step 8)
Grape Skin Extract (Step 6)
Guaiac Resin (Forwarded for adoption at Step 8)
Guanylic Acid, 5′- (Adopted at Step 8)
Guar Gum (Adopted at Step 8)
Gum Arabic (Adopted at Step 8)
Hexamethylene Tetramine (Step 6)
Hydrochloric Acid (Adopted at Step 8)
Hydroxypropyl Cellulose (Adopted at Step 8)
Hydroxypropyl Distarch Phosphate (Adopted at Step 8)
Hydroxypropyl Methyl Cellulose (Adopted at Step 8)
Hydroxypropyl Starch (Adopted at Step 8)
Indigotine (Step 6)
Inosinic Acid, 5′- (Adopted at Step 8)
Insoluble Polyvinylpyrrolidone (Adopted at Step 8)
Iron Oxide, Black (Step 6)
Iron Oxide, Red (Step 6)
Iron Oxide, Yellow (Step 6)
Isomalt (Adopted at Step 8)
Isopropyl Citrate (Step 6)
Karaya Gum (Adopted at Step 8)
Konjac Flour (Adopted at Step 8)
Lactic Acid (Adopted at Step 8)
Lactic and Fatty Acid Esters of Glycerol (Adopted at Step 8)
Lactitol (Adopted at Step 8)
Lecithin (Adopted at Step 8)
Lipase (Animal Sources) (Adopted at Step 8)
Lipase (Aspergillus oryzae, var.) (Adopted at Step 8)
Lysozyme Hydrochloride (Forwarded for adoption at Step 8)
Magnesium Carbonate (Adopted at Step 8)
Magnesium Chloride (Adopted at Step 8)
Magnesium Gluconate (Adopted at Step 8)
Magnesium Glutamate, Dl-L-, (Adopted at Step 8)
Magnesium Hydrogen Carbonate (Adopted at Step 8)
Magnesium Hydroxide (Adopted at Step 8)
Magnesium Lactate (Adopted at Step 8)
Magnesium Oxide (Adopted at Step 8)
Magnesium Silicate (Synthetic) (Adopted at Step 8)
Magnesium Chloride (Adopted at Step 8)
Malic Acid (Adopted at Step 8)
Maltitol (including maltitol syrup) (Adopted at Step 8)
Maltol (Step 6)
Mannitol (Adopted at Step 8)
Methyl Cellulose (Adopted at Step 8)
Methyl Ethyl Cellulose (Adopted at Step 8)
Methyl *p*-Hydroxybenzoate (Step 6)
Microcrystalline Cellulose (Adopted at Step 8)
Microcrystalline Wax (Step 6)
Mineral Oil (Step 6)
Mineral Oil (High Viscosity) (Step 6)
Mineral Oil (Medium & Low Viscosity, Class I) (Step 6)

Mineral Oil (Medium & Low Viscosity, Classes II & III) (Step 6)
Mixed Tocopherols Concentrate (Step 6)
Mono-and Diglycerides (Adopted at Step 8)
Monoammonium Glutamate, L- (Adopted at Step 8)
Monoammonium Orthophosphate (Step 6)
Monocalcium Orthophosphate (Step 6)
Monopotassium Glutamate, L- (Adopted at Step 8)
Monopotassium Orthophosphate (Step 6)
Monopotassium Tartrate (Step 6)
Monosodium Glutamate, L- (Adopted at Step 8)
Monosodium Orthophosphate (Step 6)
Monosodium Tartrate (Step 6)
Monostarch Phosphate, L- (Adopted at Step 8)
Nisin (Step 6)
Nitrogen (Adopted at Step 8)
Nitrous Oxide (Forwarded for adoption at Step 8)
Ortho-Phenylphenol (Forwarded for adoption at Step 8)
Orthophosphoric Acid (Step 6)
Oxidized Starch (Adopted at Step 8)
Oxystearin (Forwarded for adoption at Step 8)
Papain (Adopted at Step 8)
Pectins (Amidated and Non-amidated) (Adopted at Step 8)
Pentapotassium Triphosphate (Step 6)
Pentasodium Triphosphate (Step 6)
Phosphated Distarch Phosphate (Adopted at Step 8)
Phosphatidic Acid, Ammonium Salt (Step 6)
Pimaricin (Natamycin) (Step 6)
Polydextroses (Adopted at Step 8)
Polydimethylsiloxane (Forwarded for adoption at Step 8)
Polyethylene Glycol (Step 6)
Polyglycerol Esters of Fatty Acids (Step 6)
Polyglycerol Esters of Interesterified Ricinoleic Acid (Step 6)
Polyoxyethylene (20) Sorbitan Monolaurate (Step 6)
Polyoxyethylene (20) Sorbitan Monooleate (Step 6)
Polyoxyethylene (20) Sorbitan Monopalmitate (Step 6)
Polyoxyethylene (20) Sorbitan Monostearate (Step 6)
Polyoxyethylene (20) Sorbitan Tristearate (Step 6)
Polyoxyethylene (40) Stearate (Step 6)
Polyoxyethylene (8) Stearate (Step 6)
Polyvinylpyrrolidone (Forwarded for adoption at Step 8)
Ponceau 4R (Step 6)
Potassium Acetate (Adopted at Step 8)
Potassium Adipate (Step 6)
Potassium Alginate (Adopted at Step 8)
Potassium Ascorbate (Adopted at Step 8)
Potassium Benzoate (Step 6)
Potassium Bisulfite (Step 6)
Potassium Carbonate (Adopted at Step 8)
Potassium Dihydrogen Carbonate (Adopted at Step 8)
Potassium Ferrocyanide (Forwarded for adoption at Step 8)
Potassium Gluconate (Adopted at Step 8)
Potassium Hydrogen Carbonate (Adopted at Step 8)
Potassium Hydrogen Malate (Adopted at Step 8)
Potassium Hydroxide (Adopted at Step 8)
Potassium Lactate (Solution) (Adopted at Step 8)
Potassium Malate (Adopted at Step 8)
Potassium Metabisulfite (Step 6)
Potassium Nitrate (Step 6)
Potassium Nitrite (Step 6)
Potassium Polyphosphate (Step 6)
Potassium Propionate (Adopted at Step 8)
Potassium Sodium Tartrate (Step 6)
Potassium Sorbate (Step 6)
Potassium Sulfate (Adopted at Step 8)
Potassium Sulfite (Step 6)
Powdered Cellulose (Adopted at Step 8)
Processed Eucheuma Seaweed (Step 6)
Propane (Adopted at Step 8)
Propionic Acid (Adopted at Step 8)
Propyl Gallate (Step 6)
Propyl *p*-Hydroxybenzoate (Step 6)
Propylene Glycol (Step 6)
Propylene Glycol Alginate (Step 6)
Propylene Glycol Esters of Fatty Acids (Step 6)
Protease (Aspergillus oryzae var.) (Forwarded for adoption at Step 8)
Quillaia Extract (Step 6)
Quinoline Yellow (Step 6)
Red 2G (Step 6)
Riboflavin (Step 6)
Riboflavin 5′-Phosphate (Step 6)
Saccharin (Step 6)
Salts of Myristic, Palmitic and Stearic Acid (Ammonium, Calcium, Potassium and Sodium) (Adopted at Step 8)
Shellac (Step 6)
Silicon Dioxide (Adopted at Step 8)
Sodium Acetate (Adopted at Step 8)
Sodium Adipate (Step 6)
Sodium Alginate (Adopted at Step 8)
Sodium Aluminum Phosphate-Acidic (Step 6)
Sodium Aluminum Phosphate-Basic (Step 6)
Sodium Aluminosilicate (Adopted at Step 8)
Sodium Ascorbate (Adopted at Step 8)
Sodium Benzoate (Step 6)
Sodium Carbonate (Adopted at Step 8)
Sodium Carboxymethyl Cellulose (Adopted at Step 8)
Sodium Diacetate (Step 6)
Sodium Dihydrogen Citrate (Adopted at Step 8)
Sodium Erythorbate (Adopted at Step 8)
Sodium Ferrocyanide (Forwarded for adoption at Step 8)
Sodium Fumarate (Adopted at Step 8)
Sodium Gluconate (Adopted at Step 8)
Sodium Hydrogen Carbonate (Adopted at Step 8)
Sodium Hydrogen Malate (Adopted at Step 8)
Sodium Hydrogen Sulfite (Step 6)
Sodium Hydroxide (Adopted at Step 8)
Sodium Lactate (Solution) (Adopted at Step 8)
Sodium Malate (Adopted at Step 8)
Sodium Metabisulfite (Step 6)
Sodium Nitrate (Step 6)
Sodium Nitrite (Step 6)
Sodium ortho-Phenylphenol (Forwarded for adoption at Step 8)
Sodium Polyphosphate (Step 6)
Sodium Propionate (Adopted at Step 8)
Sodium Sesquicarbonate (Adopted at Step 8)
Sodium Sorbate (Step 6)
Sodium Stearoyl Lactylate (Step 6)
Sodium Sulfite (Step 6)
Sodium Thiosulfate (Step 6)
Sorbic Acid (Step 6)
Sorbitol (Including Sorbitol Syrup) (Adopted at Step 8)
Sorbitan Monolaurate (Step 6)
Sorbitan Monooleate (Step 6)
Sorbitan Monopalmitate (Step 6)
Sorbitan Monostearate (Step 6)
Sorbitan Tristearate (Step 6)
Stannous Chloride (Step 6)
Starch Acetate (Adopted at Step 8)
Starch Sodium Octenylsuccinate (Adopted at Step 8)
Stearyl Citrate (Forwarded for adoption at Step 8)
Stearyl Tartrate (Step 6)
Sucralose (Step 6)
Sucroglycerides (Step 6)
Sucrose Acetate Isobutyrate (Forwarded for adoption at Step 8)
Sucrose Esters of Fatty Acids (Step 6)
Sulphur Dioxide (Step 6)
Sunset Yellow FCF (Step 6)
Talc (Adopted at Step 8)
Tannic Acid (Tannins, Food Grade) (Step 6)
Tara Gum (Adopted at Step 8)
Tartaric, Acetic and Fatty Acid Esters of Glycerol (mixed) (Adopted at Step 8)
Tartaric Acid (L(+)-) (Step 6)
Tartrazine (Step 6)
Tertiary Butylhydroquinone (TBHQ) (Step 6)
Tetrapotassium Diphosphate (Step 6)
Tetrasodium Diphosphate (Step 6)
Thaumatin (Adopted at Step 8)
Thermally Oxidized Soya Bean Oil with Mono- and Di-Glycerides of Fatty Acids (TOSOM) (Forwarded for adoption at Step 8)
Thiodipropionic Acid (Forwarded for adoption at Step 8)
Titanium Dioxide (Adopted at Step 8)

Tragacanth Gum (Adopted at Step 8)
Triacetin (Adopted at Step 8)
Triammonium Citrate (Adopted at Step 8)
Tricalcium Orthophosphate (Step 6)
Triethyl Citrate (Forwarded for adoption at Step 8)
Trimagnesium Orthophosphate (Step 6)
Tripotassium Citrate (Adopted at Step 8)
Tripotassium Orthophosphate (Step 6)
Trisodium Citrate (Adopted at Step 8)
Trisodium Diphosphate (Step 6)
Trisodium Orthophosphate (Step 6)
Xanthan Gum (Adopted at Step 8)
Xylitol (Adopted at Step 8)

Codex Committee on Pesticide Residues

The Codex Committee on Pesticide Residues recommends to the Codex Alimentarius Commission establishment of maximum limits for pesticide residues for specific food items or in groups of food. A Codex Maximum Limit for Pesticide Residues (MRLP) is the maximum concentration of a pesticide residue (expressed as mg/kg), recommended by the Codex Alimentarius Commission to be legally permitted in or on food commodities and animal feeds. Foods derived from commodities that comply with the respective MRLPs are intended to be toxicologically acceptable, that is, consideration of the various dietary residue intake estimates and determinations both at the national and international level in comparison with the ADI*, should indicate that foods complying with Codex MRLPs are safe for human consumption.

Codex MRLPs are primarily intended to apply in international trade and are derived from reviews conducted by the Joint Meeting on Pesticide Residues (JMPR) following:

(a) Review of residue data from supervised trials and supervised uses including those reflecting national good agricultural practices (GAP). Data from supervised trials conducted at the highest nationally recommended, authorized, or registered uses are included in the review. In order to accommodate variations in national pest control requirements, Codex MRLPs take into account the higher levels shown to arise in such supervised trials, which are considered to represent effective pest control practices, and

(b) Toxicological assessment of the pesticide and its residue.

The following items will be considered by the Codex Alimentarius Commission at its 23rd session in June 1999. The referenced documents are ALINORMs 99/24 and 99/24A:

- Draft Revised Recommended Methods of Sampling for Determination of Pesticide Residues for Compliance with MRLs at Step 8.

*Acceptable Daily Intake (ADI) of a chemical is the daily intake which, during an entire lifetime, appears to be without appreciable risk to the health of the consumer on the basis of all the known facts at the time of the evaluation of the chemical by the Joint FAO/WHO Meeting on Pesticide Residues. It is expressed in milligrams of the chemical per kilogram of body weight.

Codex committee	Standard	Status of consideration	U.S. participation/ agenda	Responsible agency
Pesticide residues (Considered at the 30th and 31st CCPR) Annex II to Alinorms 99/24 and 99/24A.	Abamectin	MRLs under consideration at Step 5.	YES	EPA/ARS
	Acephate	MRLs under consideration at Step 5/8.	YES	EPA/ARS
	Aldicarb	MRLs under consideration at Step 5 and CXL deletions.	YES	EPA/ARS
	Aminomethyl-Phosphon (AMPA).	MRLs under consideration at Step 5.	YES	EPA/ARS
	Bifenthrin	MRLs under consideration at Step 5/8 and 8.	YES	EPA/ARS
	Captan	MRLs under consideration at Step 5.	YES	EPA/ARS
	Carbofuran	MRLs under consideration at Step 5 and 5/8 and CXL deletions.	YES	EPA/ARS
	Carbosulfan	MRLs under consideration at Step 5.	YES	ARS/EPA
	Clethodim	MRLs under consideration at Step 5.	YES	EPA/ARS
	Chlorfenvin-phos	CXL deletions	YES	EPA/ARS
	Chlormequat	MRLs under consideration at Step 5.	YES	EPA/ARS
	Chloro-Thalonil	MRLs under consideration at Step 5/8 and CXL deletions.	YES	EPA/ARS
	Chlorpyrifos	MRLs under consideration at Step 8 and CXL deletions.	YES	EPA/ARS
	Chlorpyrifos-Methyl	CXL deletions	YES	EPA/ARS
	DDT	EMRL under consideration at Step 5.	YES	EPA/ARS
	Diazinon	MRLs under consideration at Step 5 and 5/8.	YES	EPA/ARS
	Dicofol	MRLs under consideration at Step 8 and CXL deletions.	YES	EPA/ARS
	Diquat	MRLs under consideration at Step 8 and CXL deletions.	YES	EPA/ARS

Codex committee	Standard	Status of consideration	U.S. participation/ agenda	Responsible agency
	Disulfoton	MRLs under consideration at Step 6.	YES	EPA/ARS
	Ethephon	MRLs under consideration at Step 7B.	YES	EPA/ARS
	Dithio-Carbamates	MRLs under consideration at Steps 5, 5/8, 8 and CXL deletions.	YES	EPA/ARS
	Fenarimol	MRLs under consideration at Steps 5/8 and 8.	YES	EPA/ARS
	Fenbuconazole	MRLs under consideration at Steps 5/8 and 8.	YES	EPA/ARS
	Fenthion	MRLs under consideration at Step 7B.	YES	EPA/ARS
	Flumethrin	MRLs under consideration at Step 5/8.	YES	EPA/ARS
	Guazatine	CXL deletions and guideline levels.	YES	EPA/ARS
	Glyphosphate	MRLs under consideration at Step 5/8 and CXL deletions.	YES	EPA/ARS
	Haloxyfop	MRLs under consideration at Step 5.	YES	EPA/ARS
	Methamidophos	MRLs under consideration at Steps 5 and 5/8.	YES	EPA/ARS
	Methidathion	MRLs under consideration at Step 8 and CXL deletions.	YES	EPA/ARS
	Mevinphos	MRLs under consideration at Step 5 and CXL deletion.	YES	EPA/ARS
	Myclobutanil	MRLs under consideration at Steps 5 and 5/8.	YES	EPA/ARS
	Parathion	MRL at Step 8	YES	EPA/ARS
	Parathion-Methyl	MRLs under consideration at Step 8 and CXL deletion.	YES	EPA/ARS
	2-Phenyl-phenol	CXL deletion	YES	EPA/ARS
	Phenothrin	CXL deletion	YES	EPA/ARS
	Phenthoate	CXL deletion	YES	EPA/ARS
	Phorate	MRLs under consideration at Step 8 and CXL deletion.	YES	EPA/ARS
	Phosalone	CXL deletions	YES	EPA/ARS
	Phosmet	MRLs under consideration at Step 5 and CXL deletions.	YES	EPA/ARS
	Phoxim	CXL deletion	YES	EPA/ARS
	Proxpoxur	MRLs under consideration at Step 5/8 and CXL deletions.	YES	EPA/ARS
	Tebuconazole	MRLs under consideration at Steps 5 and 8.	YES	EPA/ARS
	Tebufenozide	MRLs under consideration at Steps 5 and 8.	YES	EPA/ARS
	Teflubenzuron	MRLs under consideration at Step 5/8.	YES	EPA/ARS
	Thiabendazole	MRLs under consideration at Step 5/8 and CXL deletions.	YES	EPA/ARS
	Thiometon	CXL deletions	YES	EPA/ARS

Codex Committee on Methods of Analysis and Sampling

The Codex Committee on Methods of Analysis and Sampling:

(a) Defines the criteria appropriate to Codex Methods of Analysis and Sampling;

(b) Serves as a coordinating body for Codex with other international groups working in methods of analysis and sampling and quality assurance systems for laboratories;

(c) Specifies, on the basis of final recommendations submitted to it by the other bodies referred to in (b) above, Reference Methods of Analysis and Sampling appropriate to Codex Standards which are generally applicable to a number of foods;

(d) Considers, amends, if necessary, and endorses, as appropriate, methods of analysis and sampling proposed by Codex (Commodity) Committees, except

that methods of analysis and sampling for residues of pesticides or veterinary drugs in food, the assessment of microbiological quality and safety in food, and the assessment of specifications for food additives do not fall within the terms of reference of this Committee;

(e) Elaborates sampling plans and procedures, as may be required;

(f) Considers specific sampling and analysis problems submitted to it by the Commission or any of its Committees; and

(g) Defines procedures, protocols, guidelines or related texts for the assessment of food laboratory proficiency, as well as quality assurance systems for laboratories.

The following matters, found in ALINORM 99/23, will be considered by the Codex Alimentarius Commission at its 23rd Session in June:

Proposed as new work:

Amendments to the Codex Alimentarius Commission Procedural Manual:
—Principles for the Establishment of Codex Methods of Analysis and Sampling
—Relations between Commodity Committees and General Committees

The Committee is continuing work on:

- Proposed Draft General Guidelines on Sampling Criteria for Evaluating Acceptable Methods of Analysis for Codex Purposes;
- Harmonization of Analytical Terminology ''Measurement Limits'';
- Harmonization of Reporting of Test Results Corrected for Recovery Factors;
- Measurement Uncertainty;
- In-House Method Validation; and
- Endorsement of Methods of Analysis and Sampling Provisions in Codex Standards.

Responsible Agency: HHS/FDA; USDA/AMS
U.S. Participation: Yes

Codex Committee on Food Import and Export Inspection and Certification Systems

The Codex Committee on Food Import and Export Certification and Inspection Systems is charged with developing principles and guidelines for food import and export inspection and certification systems to protect consumers and to facilitate trade. Additionally, the Committee develops principles and guidelines for the application of measures by competent authorities to provide assurance that foods comply with essential requirements. This encompasses work on: equivalence of food inspection systems including equivalence agreements, processes and procedures to ensure that sanitary measures are implemented, and the determination of the judgement of equivalence; guidelines on food import control systems; and guidelines on food product certification and information exchange. The development of guidelines for the appropriate utilization of quality assurance systems to ensure that foodstuffs conform to requirements and to facilitate trade are also included in the Committee's terms of reference. The following draft guidelines, found in ALINORM 99/30A, will be considered by the Commission at its 23rd Session in June 1999:

- Draft Guidelines for the Development of Equivalence Agreements

Codex texts to be considered by the Committee at its 8th Session, to be held 21–25 February 2000, in Adelaide, Australia, are the following:

To be considered at Step 4:

- Guidelines/Recommendations for Import Control Systems;
- Guidelines and Criteria for Official Certificate Formats and Rules Relating to the Production and Issue of Certificates; and
- Guidelines for the Judgement of Equivalence of Sanitary Measures Associated with Food Inspection and Certification Systems.

To be considered at Steps 1/2:

- Guidelines for the Utilization and Promotion of Quality Assurance Systems.

Depending upon decisions taken by the Codex Executive Committee and the Commission, the Committee may undertake work on the following items:

- Guidelines for the Format and Contents of Databases on Importing Country Legislation; and
- Guidelines for the Judgement of Equivalence of Technical Regulations other than Sanitary Measures.

Responsible Agency: HHS/FDA; USDA/FSIS
U.S. Participation: Yes

Codex Committee on General Principles

The Codex Committee on General Principles deals with rules and procedures referred to it by the Codex Alimentarius Commission. None of the following recommendations for changing the rules of procedure for Codex are in the Step Procedure. The following items, contained in ALINORM 99/33 and ALINORM 99/33A, will be considered by the Codex Alimentarius Commission at its 23rd Session in June:

- Amendment of the *Criteria for the Establishment of Work Priorities* and the *Criteria for the Establishment of Subsidiary Bodies of the Codex Alimentarius Commission;*
- Endorsement of the Amendment to the Food Hygiene Provisions in the *Relations between Commodity Committees and General Subject Committees* proposed by the Committee on Food Hygiene;
- Amendment to the Terms of Reference of the Committee on Milk and Milk Products;
- Definitions for Risk Communication and Risk Management;
- Addition of *Draft Revised Principles Concerning the Participation of International Non-Governmental Organizations in the Work of the Codex Alimentarius Commission*; and
- Additional of *Proposed Core Functions of Codex Contact Points.*

The Committee is continuing work on:

- Revision of the Code of Ethics for International Trade in Foods, including consideration of special and differential treatment for developing countries;
- Working Principles for Risk Analysis and Definition of Risk Assessment Policy;
- Measures Intended to Facilitate Consensus; and
- Consideration of Legitimate Factors Other than Science in Codex Decision-Making.

Responsible Agency: USDA/FSIS
U.S. Participation: Yes

Codex Committee on Food Labelling

The Codex Committee on Food Labelling is responsible for drafting provisions on labelling problems assigned by the Codex Alimentarius Commission. The following items will be considered by the Committee at its 23rd Session in June 1999. The reference documents are ALINORMs 99/22 and 99/22A.

To be considered at Step 8:

- Draft Guidelines for the Production, Processing, Labelling and Marketing of Organically Produced Foods;
- Draft Guidelines for Labelling Foods that can cause Hypersensitivity (Draft Amendment to the General Standard for the Labelling of Prepackaged Foods); and
- Proposed Draft Amendment to the Labelling Section of the Standard for Quick Frozen Fish Sticks (Fish Fingers) and Fish Portions and Fish Fillets, Breaded or in Batter.

To be considered at Step 5:

- Proposed Draft Amendment to the General Standard for the Labelling of Prepackaged Foods (CLASS NAMES); and
- Proposed Draft Amendment to the Guidelines on Nutrition Labelling.

The Committee is continuing to work on:

- Proposed Draft Recommendations for the Use of Health Claims;
- Draft Guidelines for Organically Produced Foods (Animal Products);
- Proposed Draft Recommendations on Labelling/Biotechnology (Mandatory Labelling);
- Proposed Draft Amendment to the General Labelling Standard (Class Names);
- Proposed Draft Recommendations to the Guidelines on Nutrition Labelling;
- Proposed Draft Recommendations for the Use of the term ''Vegetarian''; and
- Discussion paper on misleading claims.

Responsible Agency: HHS/FDA; USDA/FSIS
U.S. Participation: Yes

Codex Committee on Food Hygiene

The Codex Committee on Food Hygiene has three primary responsibilities. The first is to draft basic provisions on food hygiene applicable to all foods. These provisions normally take the form of Codes of Hygienic Practice for a specific commodity (e.g., bottled water). Second, the Committee considers, amends, if necessary, and endorses food hygiene provisions that are incorporated into specific Codex commodity standards by the Codex commodity committees. These provisions normally contain generic wording referencing the *Recommended Code of Hygienic Practice: General Principles for Food Hygiene* (ref: CAC/RCP 1–1969, Rev. 3–1997), but may also include other provisions. Finally, the Committee provides general guidance to the Commission on matters relating to Food Hygiene. This often takes the form of providing general guidance documents such as the *Draft Principles and Guidelines for the Conduct of Microbiological Risk Assessment* and *Draft Proposed Principles and Guidelines for the Conduct of Microbiological Risk Management.* The following items, found in ALINORMS 99/13 and 99/13A, will be considered by the Codex Alimentarius Commission at its 23rd Session in June 1999:

To be considered at Step 8:

- Draft Code of Hygienic Practice for Refrigerated Packaged Foods with Extended Shelf-Life; and
- Draft Principles and Guidelines for the Conduct of Microbiological Risk Assessment.

To be considered at Step 5 of the Accelerated Procedure:

- Draft Amendment to the International Recommended Code of Practice—General Principles of Food Hygiene.

To be considered at Step 5:

- Proposed Draft Code of Hygienic Practice for the Transport of Foodstuffs in Bulk and Semi-Packaged Foodstuffs.

To be adopted:

- Amendment to the Procedural Manual: Food Hygiene Provisions in ''Relations between Commodity Committees and General Committees.''

The Codex texts to be considered by the Committee at its 32nd Session to be held 29 Nov.–3 Dec. 1999 in Washington, DC, are the following:

To be considered at Step 7:

- Draft Code of Hygienic Practice for Packaged (Bottled) Drinking Waters (Other Than Natural Mineral Waters); and
- Draft Code of Hygienic Practice for the Transport of Foodstuffs in Bulk and Semi-Packaged Foodstuffs.

To be considered at Step 4:

- Proposed Draft Code of Hygienic Practice for Milk and Milk Products;
- Proposed Draft Code of Hygienic Practice for the Primary Production, Harvesting and Packaging of Fresh Product/Fruits and Vegetables;
- Proposed Draft Code of Hygienic Practice for Pre-cut Raw Fruits and Vegetables;
- HACCP in Less Developed Businesses; and
- Proposed Draft Principles and Guidelines for the Conduct of Microbiological Risk Management.

Other committee work:

- Discussion Paper on the Proposed Draft Recommendations for the control of *Listeria monocytogenes* in Foods in International Trade;
- Proposed Guidelines for the Hygienic Reuse of Processing Water in Food Plants;
- Prioritization of the Revision of the Codes of Hygienic Practice;
- Discussion Paper on Antibiotic Resistance in Bacteria in Food; and
- Discussion Paper on Consideration of Viruses in Food.

At its 31st Session, the Committee postponed work on the *Implications for the Broader Application of the HACCP System* and discontinued work on the *Broader Issues on the Application of Microbiological Risk Evaluation in International Foods and Feed Trade.*

Responsible Agency: HHS/FDA; USDA/FSIS
U.S. Participation: Yes

Codex Committee on Fresh Fruits and Vegetables

The Codex Committee on Fresh Fruits and Vegetables is responsible for elaborating world-wide standards and codes of practice for fresh fruits and vegetables. The following draft standards will be considered by the Codex Alimentarius Commission at its 23rd Session in June 1999. The draft standards listed below are contained in ALINORMs 99/35 and 99/35A.

To be considered at Step 8:

- Draft Standard for Chayote;
- Draft Standard for Guava;
- Draft Standard for Pineapples;
- Draft Standard for Grapefruit (except for sizing provisions); and
- Draft Standard for Longans.

To be considered for adoption at Step 5/8, with the omission of steps 6 and 7:

- Draft Standard for Mexican Limes;
- Draft Standard for Ginger;
- Draft Standard for Tisquisque (White and Lilac);
- Draft Standard for Yellow Pitahayas; and
- Draft Standard for Papaya.

To be considered at Step 5:

- Proposed Draft Standard for Asparagus;
- Proposed Draft Standard for Oranges; and
- Proposed Draft Standard for Uchuva.

Proposed new work to be endorsed by the committee:

- Proposed Draft Standard for Apples;
- Proposed Draft Standard for Tomatoes; and
- Proposed Draft Standard for Grapes.

The Committee is continuing work on:

- Discussion Paper on Size Tolerances, including sizing provisions of the Draft Standards for Grapefruit, Limes, Pummelos, and Oranges at Step 7;
- Draft Code of Practice for the Quality Inspection and Certification of Fresh Fruits and Vegetables at Step 7;
- Inspection Site Requisites at Step 3;
- Proposed Draft Standard for Yucca at Step 3; and
- Discussion Paper on Definition of Terms.

Responsible Agency: USDA/AMS
U.S. Participation: Yes

Codex Committee on Nutrition and Foods for Special Dietary Uses

The Codex Committee on Nutrition and Foods for Special Dietary Uses is responsible for studying nutritional problems referred by the Codex Alimentarius Commission. The Committee also drafts provisions on nutritional aspects for all foods and develops guidelines, general principles, and standards for foods for special dietary uses. The following items, found in ALINORM 99/26, will be considered by the Codex Alimentarius Commission in June 1999.

To be considered at Step 8:

- Draft Table of Conditions for Nutrient Contents (Part B), Guidelines for Nutrient Claims.

To be considered at Step 5:

- Proposed Draft Revised Standards for Processed Cereal-Based Foods for Infants and Young Children.

Proposal for new work:

- A review of the Advisory List of Mineral Salts and Vitamin Compounds.

Proposal to discontinue work to be considered by the Executive Committee of the Codex Alimentarius Commission at its 46th Session:

- Consideration of Dietary Modelling

The committee is continuing work on:

- Draft Table of Conditions for Nutrient Contents Part B, containing provisions on Fibre), Guidelines for Use of Nutrition Claims;
- Proposed Draft Revised Standards for Gluten-Free Foods;
- Proposed Draft Revised Standards for Infant Formula;
- Discussion paper to facilitate discussion on: Proposed Draft Guidelines for Vitamin and Mineral Supplements;
- Nutrient Reference Values for Labelling Purposes;
- Discussion paper on Vitamins and Minerals in Foods for Special Medical Purposes;
- Discussion paper on Criteria for Scientific Evidence Relative to Health Claims;
- Discussion paper on Provisions of Fortification on Iodine, Iron and Vitamin A in the Guidelines of Nutrition Claims; and
- Discussion paper on Proposal to Design the Basis for Derivation of Energy Conversion Factors in the Codex Guidelines on Nutrition Labelling.

Responsible Agency: HHS/FDA U.S. Participation: Yes

Codex Committee on Fish and Fishery Products

The Fish and Fishery Products Committee is responsible for elaborating standards for fresh and frozen fish, crustaceans and mollusks. The items below, found in ALINORM 99/18, will be considered by the Codex Alimentarius Commission at its 23rd Session in June 1999.

To be considered at Step 8:

- Draft Guidelines for the Sensory Evaluation of Fish and Shellfish in Laboratories.

To be considered at Step 5 of the Accelerated Procedure:

- Proposed Draft Amendment to the Standard for Canned Sardines and Sardine-Type Products (inclusion of additional species).

The Committee is continuing work on:

- Draft Standard for Dried Salted Anchovies;
- Draft Standard for Crackers from Marine and Freshwater Fish, Crustacean and Molluscan Shellfish;
- Proposed Draft Standard for Salted Atlantic Herring and Salted Sprats;
- Proposed Draft Code of Practice for Fish and Fishery Products;
- Model Certificate for Fish and Fishery Products;
- Proposed Draft Standard for Smoked Fish; and
- Proposed Draft Standard for Molluscan Shellfish.

Responsible Agency: HHS/FDA; USDC/NOAA/NMFS

U.S. Participation: Yes

Codex Committee on Milk and Milk Products

The Codex Committee on Milk and Milk Products is responsible for establishing international codes and standards for milk and milk products. The following revised standards and draft revised codes of principles will be considered at the Session of the Codex Alimentarius Commission in June 1999. In addition, the Commission will consider the revocation of 14 individual Cheese Standards and the initiation of proposed new work to revise two existing standards. The reference document is ALINORM 99/11.

To be considered at Step 8:

- Draft Revised Standard for Butter;
- Draft Revised Standard for Milkfat Products;
- Draft Revised Standard for Evaporated Milks;
- Draft Revised Standard for Sweetened Condensed Milk;
- Draft Revised Standard for Milk and Cream Powders;
- Draft Revised Standard for Cheese;
- Draft Revised Standard for Whey Cheese;
- Draft Revised Standard for Cheeses in Brine; and
- Draft General Standard for the Use of Dairy Terms.

Revocation of Codex Standards for:

- Cheshire
- Limburger
- Svecia
- Butterkase
- Harzer Kase
- Herrgardsost
- Hushallsost
- Maribo
- Fynbo
- Romadur
- Amsterdam
- Leidse
- Friese
- Edelpilzkase

Proposed new work:

- Revision of Codex Standard for Whey Powders; and
- Revision of Codex Standard for Edible Casein Products.

In addition, the Committee is continuing work on:

- Proposed Draft Revised Standard for Processed Cheese;
- Proposed Draft Revised Standard for Cream;
- Proposed Draft Revised Individual Standards for Cheese (including a new standard for Mozzarella);
- Proposed Draft Revised Standard for Fermented Milk Products;
- Proposed Draft Standard for Dairy Spread;
- Draft Standard for Unripened Cheese including Fresh Cheese;
- Model Export Certificates for Milk Products; and
- Heat Treatment Definitions.

Responsible Agency: USDA/AMS; HHS/FDA

U.S. Participation: Yes

Codex Committee on Fats and Oils

The Codex Committee on Fats and Oils is responsible for elaborating standards for fats and oils of animal, vegetable, and marine origin. The reference document is ALINORM 99/17. The Sixteenth Session of the Committee recommended the following be adopted by the Commission in June 1999:

To be considered at Step 8:

- Draft Standard for Named Animal Fats;
- Draft Standard for Edible Fats and Oils Not Covered by Individual Standards;
- Draft Revised Code of Practice for the Storage and Transport of Fats; and
- Draft Standard for Named Vegetable Oils.

The Committee is continuing work on:

- Draft Standard for Fat Spreads and Blended Fat Spreads; and
- Draft Standard for Olive Oils and Olive-Pomace Oils.

Responsible Agency HHS/FDA; USDA/ARS

U.S. Participation: Yes

Codex Committee on Cocoa Products and Chocolate

The Codex Committee on Cocoa Products and Chocolate is responsible for elaborating world-wide standards for cocoa products and chocolate. The 21st Session of the Commission endorsed the recommendation of the Forty-Second Session of the Executive Committee to initiate the revision of the Cocoa Products and Chocolate Standards. The following draft standards, found in ALINORM 99/14, will be considered by

the Codex Alimentarius Commission at its 23rd Session in June 1999.

To be considered at Step 5:

- Proposed Draft Revised Standard for Cocoa Butter;
- Proposed Draft Revised Standard for Cocoa Mass (Cocoa/Chocolate Liquor) and Cocoa Cake for Use in the Manufacture of Cocoa and Chocolate Products; and
- Proposed Draft Revised Standard for Cocoa Powders (Cocoas) and Dry Cocoa-Sugar Mixture.

The Committee is continuing to work on:

- Proposed Draft Standard for Chocolate and Chocolate Products.

Responsible Agency: HHS/FDA
U.S. Participation: Yes

Codex Committee on Processed Fruits and Vegetables

The Codex Committee on Processed Fruits and Vegetables (CCPFV) is responsible for elaborating standards for processed fruits and vegetables. After having been adjourned sine die, the Committee reconvened in Washington, DC, in March 1998 to begin work revising the standards. The reference ALINORM is 99/27.

The Committee is continuing work on the following at Step 7:

- Draft Standard for Canned Bamboo Shoots;
- Draft Standard for Pickles;
- Draft Standard for Kimchee;
- Draft Revised Standard for Canned Applesauce; and
- Draft Revised Standard for Canned Pears.

To be considered by the Committee at Step 3:

- Proposed Draft Standard for Canned Stone Fruits;
- Proposed Draft Standard for Canned Citrus Fruits;
- Proposed Draft Standard for Canned Berry Fruits;
- Proposed Draft Standard for Canned Mangoes;
- Proposed Draft Standard for Canned Pineapple;
- Proposed Draft Standard for Canned Fruit Cocktail;
- Proposed Draft Standard for Canned Tropical Fruit Salad;
- Proposed Draft Standard for Canned Chestnuts and Chestnut Puree;
- Proposed Draft Standard for Canned Vegetables;
- Proposed Draft Revised Standard for Canned Tomatoes;
- Proposed Draft Revised Standard for Canned Mushrooms;
- Proposed Draft Standard for Jams, Jellies and Marmalades;
- Proposed Draft Standard for Chutney;
- Proposed Draft Revised Standard for Pickled Cucumbers (Cucumber Pickles);
- Proposed Draft Standard for Table Olives;
- Proposed Draft Revised Standard for Processed Tomato Concentrates;
- Proposed Draft Revised Standard for Dried Apricots;
- Proposed Draft Revised Standard for Dates;
- Proposed Draft Revised Standard for Raisins;
- Proposed Draft Revised Standard for Grated Desiccated Coconut;
- Proposed Draft Revised Standard for Unshelled Pistachio Nuts;
- Proposed Draft Revised Standard for Dried Edible Fungi;
- Proposed Draft Revised Standard for Edible Fungi and Fungus Products;
- Proposed Draft Standard for Soy Sauce;
- Proposed Draft Guidelines for Packing Media in Canned Fruits; and
- Proposed Draft Guidelines for Packing Media in Canned Vegetables.

Responsible Agency: HHS/FDA USDA/AMS
U.S. Participation: Yes

Certain Codex Commodity Committees

Several Codex Alimentarius Commodity Committees have adjourned *sine die*. The following Committees fall into this category:

- Cereals, Pulses and Legumes*
  Responsible Agency: HHS/FDA, USDA/GIPSA
  U.S. Participation: Yes
- Meat Hygiene*
  Responsible Agency: USDA/FSIS
  U.S. Participation: Yes
- Processed Meat and Poultry Products*
  Responsible Agency: USDA/FSIS
  U.S. Participation: Yes
- Sugars
  Responsible Agency: HHS/FDA USDA/ARS
  U.S. Participation: Yes
- Soups and Broths
  Responsible Agency: USDA/FSIS
  Participation: Yes
- Vegetable Proteins*
  onsible Agency: HHS/FDA, USDA/ARS
  Participation: Yes

* There is no planned activity for these Committees in the next year.

A brief report on activities of the Codex Committees on Soups and Broths, and Sugars follows:

Codex Committee on Soups and Broths

The Codex Committee on Soups and Broths elaborated worldwide standards for soups, broths, bouillons and consommes. The committee adjourned *sine die*. The main tasks of the Committee were completed. However, at its June 1997 meeting, the Codex Alimentarius Commission requested that the Committee commence work revising the Standard for Bouillons and Consommes. A Proposed Draft Revised Standard for Bouillons and Consommes was prepared by the Secretariat and has been circulated to member countries for comment at Step 3.

Responsible Agency: USDA/FSIS
U.S. Participation: Yes

Codex Committee on Sugars

The Codex Committee on Sugars elaborated standards for all types of sugars and sugar products. The Committee was adjourned *sine die*, but was asked to revise the standards for sugar and honey. The Codex Alimentarius Commission at its 22nd Session did not adopt the revised standards for sugar and honey but returned them to Step 6 for a new round of comments. Following the current round of comments, the Draft Revised Standard for Sugar will be submitted to the 23rd Session of the Commission for consideration at Step 8. The Draft Standard for Honey will remain at Step 6 for further consideration.

Responsible Agency: USDA/ARS; AHHS/FDA
U.S. Participation: Yes

Joint U.N.E.C.E./Codex Alimentarius Groups of Experts

Two groups of experts dealt with specific commodities, much as the Codex Commodity Committees do. The Joint Groups of Experts completed their main tasks and were adjourned. These Groups were:

- Standardization of Quick Frozen Foods; and
- Standardization of Fruit Juices.

The Executive Committee, at its 45th Session, noting that the United Nations Economic Commission for Europe had abolished the work programme for the Joint Codex/UNECE Groups of Experts, agreed to abolish these committees. Subject to confirmation by the Commission, it assigned the work of revising the Codex Standards for Quick Frozen Fruits and Vegetables to the Codex Committee on Processed Fruits and Vegetables and any revision of the Codex Recommended International Code of Practice for the Processing and Handling of Quick Frozen Foods to the Codex Committee on Food Hygiene. In regards to the Codex Standards for Fruit Juices, the Executive Committee agreed that these standards require updating and referred the matter to the Commission to decide whether to

establish an intergovernmental task force or new committee to undertake this work.

Responsible Agency: HHS/FDA; USDA/AMS

U.S. Participation: Yes

Codex Committee for Natural Mineral Waters

The Codex Committee for Natural Mineral Waters is responsible for elaborating standards for natural mineral waters. The Codex Alimentarius Commission at its 22nd meeting approved the development of a standard for bottled/packaged water other than natural mineral waters. The Sixth Session of the Committee discussed the Proposed Draft General Standard for Bottled/Packaged Drinking Waters (Other Than Natural Mineral Waters) and agreed to return the draft to Step 3 for further comments. A request for comments and information on the need for inclusion and a wording of a definition for ''mineral water'' has been circulated. The reference document is ALINORM 99/20.

Responsible Agency: HHS/FDA

U.S. Participation: Yes

FAO/WHO Regional Coordinating Committees

The Codex Alimentarius Commission is made up of an Executive Committee, as well as approximately 25 subsidiary bodies. Included in these subsidiary bodies are several coordinating committees.

There are currently five Regional Coordinating Committees:

—Coordinating Committee for Africa
—Coordinating Committee for Asia
—Coordinating Committee for Europe
—Coordinating Committee for Latin America and the Caribbean
—Coordinating Committee for North America and the South-West Pacific

The United States participates as an active member of the Coordinating Committee for North America and the South-West Pacific, and is informed of the other coordinating committees through meeting documents, final reports, and representation at meetings.

Each regional committee:

—Defines the problems and needs of the region concerning food standards and food control;
—Promotes within the committee contacts for the mutual exchange of information on proposed regulatory initiatives and problems arising from food control and stimulates the strengthening of food control infrastructures;
—Recommends to the Commission the development of world-wide standards for products of interest to the region, including products considered by the committee to have an international market potential in the future; and
—Exercises a general coordinating role for the region and such other functions as may be entrusted to it by the Commission.

Codex Coordinating Committee for North America and the South-West Pacific

The Coordinating Committee is responsible for defining problems and needs concerning food standards and food control of all Codex member countries of the regions. The Fifth Session of the Committee was held October 6–9, 1998, in Seattle, WA. The following matters for consideration by the Codex Alimentarius Commission at its 23rd Session in June can be found in ALINORM 99/32:

- Report on the Review of the Status and Objectives of Codex Texts Under the WTO Agreements;
- Report on Activities Related to Risk Analysis in Codex and Other Bodies;
- Review and Promotion of Acceptances of Codex Standards and Maximum Residue Limits for Pesticides by Countries in the Region;
- Activities of Codex Contact Points and National Codex Committees in the Region;
- Consumer Participation in Codex Work and Related Matters; and
- General Standard on Foods Produced through Biotechnology.

Agency *Responsible:* USDA/FSIS

U.S. PARTICIPATION: Yes

Attachment 2—U.S. Codex Alimentarius Officials, Codex Committee Chairpersons

Mr. Steven N. Tanner, Director, Technical Services Division, Grain Inspection, Packers & Stockyards Administration, U.S. Department of Agriculture, 10383 N. Executive Hills Blvd., Kansas City, MO 64153–1394, Phone #: (816) 891–0401, Fax #: (816) 891–0478—Cereals, Pulses and Legumes (adjourned *sine die*)

Dr. I. Kaye Wachsmuth, Deputy Administrator, Office of Public Health and Science, Food Safety and Inspection Service, U.S. Department of Agriculture, Room 341–E, Jamie L. Whitten Federal Building, 1400 Independence Avenue, SW, Washington, DC 20250–3700, Phone #: (202) 720–2644, Fax # (202) 690–2980—Food Hygiene

Mr. David L. Priester, International Standards Coordinator, Fresh Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, Room 2069, South Agriculture Building, Washington, DC 20090–6456, Phone #: (202) 720–2184, Fax #: (202) 720–0016—Processed Fruits and Vegetables

Dr. Stephen F. Sundlof, Director, Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Place (HFV–1), Rockville, MD 20855, Phone #: (301) 594–1740, Fax #: (301) 594–1830—Residues of Veterinary Drugs in Foods

Listing of U.S. Delegates and Alternate Delegates

[Worldwide General Subject Codex Committees]

CODEX COMMITTEE ON RESIDUES OF VETERINARY DRUGS IN FOODS

(Host Government—United States)

U.S. Delegate: Dr. Robert C. Livingston, Center for Veterinary Medicine (HFV–1), Food and Drug Administration, 7500 Standish Place, Rockville, MD 20855, Phone #: (301) 594–5903, Fax #: (301) 594–1830

Alternate Delegate: Dr. Pat Basu, Director, Chemistry and Toxicology Division, Office of Public Health and Science, Food Safety and Inspection Service, U.S. Department of Agriculture, 6912 Franklin Court, 1099 14th Street, NW, Washington, DC 20250–3700, Phone #: (202) 501–7319, Fax: (202) 501–7639

CODEX COMMITTEE ON FOOD ADDITIVES AND CONTAMINANTS

(Host Government—The Netherlands)

U.S. Delegate: Dr. Alan Rulis, Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C Street, SW, (HFS–200), Washington, DC 20204, Phone #: (202) 418–3100, Fax #: (202) 418–3131

Alternate Delegate: Dr. Terry C. Troxell, Director, Division of Programs and Enforcement Policy, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C Street, SW, (HFS–456), Washington, DC 20204, Phone #: (202) 205–5321, Fax #: (202) 205–4422

CODEX COMMITTEE ON PESTICIDE RESIDUES

(Host Government—The Netherlands)

U.S. Delegate: Mr. Fred Ives, Health Effects Division (7509C), Office of Pesticide Programs, U.S. Environmental Protection Agency 401 M Street, SW, Washington, DC 20460, Phone #: (703) 305–6378, Fax #: (703) 305–5147

Alternate Delegate: Dr. Richard Parry, Jr., Assistant Administrator, Cooperative Interactions, Agricultural Research Service, U.S. Department of Agriculture, Room 358–A, Jamie L. Whitten Federal Bldg., Washington, DC 20250–3700, Phone #: (202) 720–3973, Fax #: (202) 720–5427

CODEX COMMITTEE ON METHODS OF ANALYSIS AND SAMPLING

(Host Government—Hungary)

U.S. Delegate: Dr. William Horwitz, Scientific Advisor, Center for Food Safety and Applied Nutrition (HFS–500), Food and Drug Administration, Room 3832, 200 C Street, SW, Washington, DC 20204, Phone #: (202) 205–4346, Fax #: (202) 401–7740

Alternate Delegate: Mr. William Franks, Deputy Administrator, Science and Technology, Agricultural Marketing Service, U.S. Department of Agriculture, Room 3507, South Agriculture Building, 1400 Independence Avenue, SW, Washington, DC 20250, Phone #: (202) 720–5231, Fax #: (202) 720–6496

CODEX COMMITTEE ON FOOD IMPORT AND EXPORT CERTIFICATION AND INSPECTION SYSTEMS

(Host Government—Australia)

Delegate: Mr. L. Robert Lake, Director, Office of Regulations and Policy, U.S. Food and Drug Administration, 200 C Street, SW, Washington, DC 20204, Phone #: (202) 205–4160, Fax #: (202) 401–7739

Alternate Delegate: Mr. Mark Manis, Director, International Policy Development Division, Office of Policy, Program Development, and Evaluation, Food Safety and Inspection Service, U.S. Department of Agriculture, Room 4434, South Agriculture Building, 1400 Independence Avenue, SW, Washington, DC 20250–3700, Phone #: (202) 720–6415, Fax #: (202) 720–7990

CODEX COMMITTEE ON GENERAL PRINCIPLES

(Host Government—France)

Delegate: Note: A member of the Steering Committee heads the delegation to meetings of the General Principles Committee

CODEX COMMITTEE ON FOOD LABELLING

(Host Government—Canada)

Delegate: Mr. L. Robert Lake, Director, Office of Regulations and Policy, U.S. Food and Drug Administration, 200 C Street, SW, Washington, DC 20204, Phone #: (202) 205–4160, Fax #: (202) 401–7739

Alternate Delegate: Dr. Robert Post, Director, Labeling and Additive Policy Division, Office of Policy, Program Development and Evaluation, Food Safety and Inspection Service, U.S. Department of Agriculture, Cotton Annex, Room 602, Washington, DC 20250–3700, Phone #: (202) 205–0279, Fax #: (202) 205–3625

CODEX COMMITTEE ON FOOD HYGIENE

(Host Government—United States)

Delegate: Dr. Robert Buchanan, Senior Science Advisor, Food and Drug Administration, 200 C Street, SW, Washington, DC 20204, Phone #: (202) 205–5053, Fax #: (202) 205–4970
Alternate Delegate: Vacant

CODEX COMMITTEE ON NUTRITION AND FOODS FOR SPECIAL DIETARY USES

(Host Government—Germany)

Delegate: Dr. Elizabeth Yetley, Director, Office of Special Nutritionals, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C Street, SW (HFS–450), Washington, DC 20204, Phone #: (202) 205–4168, Fax #: (202) 205–5295

Alternate Delegate: Dr. Robert J. Moore, Senior Regulatory Scientist, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C Street, SW (HFS–456), Washington, DC 20204, Phone #: (202) 205–4605, Fax #: (202) 260–8957

CODEX COMMITTEE ON FRESH FRUITS AND VEGETABLES

(Host Government—Mexico)

Delegate: Mr. David L. Priester, International Standards Coordinator, Fresh Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, Room 2069, South Agriculture Building, Washington, DC 20090–6456, Phone #: (202) 720–2184, Fax #: (202) 720–0016

Alternate Delegate: Mr. Larry B. Lace, Branch Chief, Fresh Products Branch, Fruits and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Room 2049, South Agriculture Building 1400 Independence Avenue, SW, Washington, DC 20090–6456, Phone #: (202) 720–5870, Fax #: (202) 720–0393

CODEX COMMITTEE ON FISH AND FISHERY PRODUCTS

(Host Government—Norway)

Delegate: Mr. Philip C. Spiller, Director, Office of Seafood (HFS–400) VERB, Center for Food Safety and Applied Nutrition, Food and Drug Administration 200 C Street, SW, Washington, DC 20204, Phone #: (202) 418–3133, Fax #: (202) 418–3198

Alternate Delegate: Mr. Samuel W. McKeen, Director, Office of Trade and Industry Services, National Oceanic and Atmospheric Administration, NMFS 1335 East-West Highway, Room 6490, Silver Spring, MD 20910, Phone #: (301) 713–2351, Fax #: (301) 713–1081

CODEX COMMITTEE ON MILK AND MILK PRODUCTS

(Host Government—New Zealand)

Delegate: Mr. Duane Spomer, Chief, Dairy Standardization Branch, U.S. Department of Agriculture, Agricultural Marketing Service, Room 2750, South Agriculture Building 1400 Independence Avenue, SW, Washington, DC 20250–0230, Phone #: (202) 720–9382, Fax #: (202) 720–2643

Alternate Delegate: Mr. John C. Mowbray, Division of Programs and Enforcement Policy, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C Street, SW (HFS–306), Washington, DC 20204, Phone #: (202) 205–1731, Fax #: (202) 205–4422

CODEX COMMITTEE ON FATS AND OILS

(Host Government—United Kingdom)

Delegate: Mr. Charles W. Cooper, Director, International Activities Staff, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C Street, SW, Room 5823 (HFS–585), Washington, DC 20204, Phone #: (202) 205–5042, Fax #: (202) 401–7739

Alternate Delegate: Dr. Dwayne Buxton, National Program Leader for Oilseeds and Bioscience, Agricultural Research Service, Room 212, Building 005, Barc West, Beltsville, MD 20705, Phone #: (301) 504–5321, Fax #: (301) 504–5467

CODEX COMMITTEE ON PROCESSED FRUITS AND VEGETABLES

(Host Government—United States)

Delegate: Mr. James Rodeheaver, Chief, Processed Products Branch, Fruits and Vegetables Program, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, Room 0709, South Agriculture Building, Washington, DC 20090–6456, Phone: (202) 720–4693, Fax: (202) 690–1527

Alternate Delegate: Mr. Charles W. Cooper, Director, International Activities Staff Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C Street, SW, Room 5823 (HFS–585), Washington, DC 20204, Phone #: (202) 205–5042, Fax #: (202) 401–7739

CODEX COMMITTEE ON COCOA PRODUCTS AND CHOCOLATE

(Host Government—Switzerland)

U.S. Delegate: Mr. Charles W. Cooper, Director, International Activities Staff, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C Street, SW, Room 5823 (HFS–585), Washington, DC 20204, Phone #: (202) 205–5042, Fax #: (202) 401–7739

Alternate Delegate: Dr. Michelle Smith, Food Technologist, Office of Food Labeling, Center for Food Safety and Applied Nutrition (HFS–158), 200 C Street, SW, Washington, DC 20204, Phone #: (202) 205–5099, Fax #: (202) 205–4594

CODEX COMMITTEE ON NATURAL MINERAL WATERS

(Host Government—Switzerland)

Delegate: Dr. Terry C. Troxell, Director, Office of Plant and Dairy Foods and Beverages, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C Street, SW (HFS–305), Washington, DC 20204, Phone #: (202) 205–5321, Fax #: (202) 205–4422

Alternate Delegate: Ms. Shellee Davis, Division of Programs and Enforcement Policy, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C Street, SW (HFS–306), Washington, DC 20204, Phone #: (202) 205–4681, Fax #: (202) 205–4422

CODEX COMMITTEE ON SUGARS

(Host Government—United Kingdom)

Delegate: Dr. Benjamin Legendre, USDA/ARS, SRRC, Sugarcane Research Unit, 800 Little Bayou Black Drive, P.O. Box 470, Houma, LA 70361–0470, Phone #: (504) 872–5042, Fax #: (504) 868–8369

Alternate Delegate: Dr. Dennis M. Keefe, Office of Premarket Approval, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C Street, SW (HFS–206), Washington, DC 20204, Phone #: (202) 418–3113 Fax #: (202) 418–3131

CODEX COMMITTEE ON CEREALS, PULSES AND LEGUMES [1]

(Host Government—United States)

Delegate: Mr. Charles W. Cooper, Director, International Activities Staff, Center for Food Safety and Applied Nutrition, Room 5823 (HFS–585), Food and Drug Administration, 200 C Street, SW, Washington, DC 20204, Phone #: (202) 205–5042, Fax #: (202) 401–7739

Alternate Delegate: Mr. David Shipman, Deputy Administrator, Grain Inspection Packers and Stockyards, Administration, U.S. Department of Agriculture, Room 1092, South Agriculture Building, 1400 Independence Avenue, SW, Washington, DC 20250–3601, Phone #: (202) 720–9170, Fax #: (202) 720–1015

CODEX COMMITTEE ON SOUPS AND BROTHS [1]

(Host Government—Switzerland)

Delegate: Mr. Charles Edwards, Director, Labeling, Products and Technology Standards Division, Office of Policy, Program Development and Evaluation, Food Safety and Inspection Service, U.S. Department of Agriculture, Room 405, Cotton Annex, 300 12th Street, SW, Washington, DC 20250–3700, Phone #: (202) 205–0675, Fax #: (202) 205–0080

Alternate Delegate: Dr. Robert Post, Director, Labeling and Compounds Review Division, Office of Policy, Program Development and Evaluation, Food Safety and Inspection Service, U.S. Department of Agriculture, Room 602, Cotton Annex, 300 12th Street, SW, Washington, DC 20250–3700, Phone #: (202) 205–0279, Fax #: (202) 205–3625

CODEX COMMITTEE ON VEGETABLE PROTEINS [1]

(Host Government—Canada)

U.S. Delegate: Dr. Wilda H. Martinez, Associate Deputy Administrator, Aqua Products and Human Nutrition Sciences, U.S. Department of Agriculture, Agricultural Research Service, Room 107, B–005, Beltsville, MD 20705, Phone #: (301) 504–6275, Fax #: (301) 504–6699

Alternate Delegate: Vacant

CODEX COMMITTEE ON MEAT HYGIENE [1]

(Host Government—New Zealand)

Delegate: Dr. John Prucha, Assistant Deputy Administrator, International and Domestic Policy, Food Safety and Inspection Service, U.S. Department of Agriculture, Room 4866, South Agriculture Building, Washington, DC 20250–3700, Phone #: (202) 720–3473, Fax #: (202) 690–3856

Alternate Delegate: Vacant

CODEX COMMITTEE ON PROCESSED MEAT AND POULTRY PRODUCTS [1]

(Host Government—Denmark)

U.S. Delegate: Dr. Daniel Engeljohn, Director, Regulations Development and Analysis Division, Office of Policy, Program Development and Evaluation, Food Safety and Inspection Service, U.S. Department of Agriculture, Room 112, Cotton Annex, 300 12th Street, SW, Washington, DC 20250–3700, Phone #: (202) 720–5627, Fax #: (202) 690–0486

Alternate Delegate: Mr. Charles Edwards, Director, Labeling, Products and Technology, Standards Division, Office of Policy, Program Development and Evaluation, Food Safety and Inspection Service, U.S. Department of Agriculture, Room 405, Cotton Annex, 300 12th Street, SW, Washington, DC 20250–3700, Phone #: (202) 205–0675, Fax #: (202) 205–0080

Subsidiary Bodies of the Codex Alimentarius

There are five regional coordinating committees:

Coordinating Committee for Africa
Coordinating Committee for Asia
Coordinating Committee for Europe
Coordinating Committee for Latin America and the Caribbean, and
Coordinating Committee for North America and the South-West Pacific

Contact: Mr. Patrick Clerkin, Director, U.S. Codex Office, Food Safety and Inspection Service, U.S. Department of Agriculture, Room 4861, South Agriculture Building, 1400 Independence Avenue, SW, Washington, DC 20250–3700, Phone #: (202) 205–7760, Fax #: (202) 720–3157.

Attachment 3

TIMETABLE OF CODEX SESSIONS

[June 1998 through June 2000]

1998:			
CX 702–45	Executive Committee of the Codex Alimentarius Commission (45th Session)	3–5 June	Rome.
CX 722–23	Codex Committee on Fish and Fishery Products (23rd Session)	8–12 June	Bergen.
CX 716–13	Codex Committee on General Principles (13th Session)	7–11 September	Paris.
CX 730–11	Codex Committee on Residues of Veterinary Drugs in Foods (11th Session)	14–17 September.	Washington, DC.
CX 720–21	Codex Commission on Nutrition and Foods for Special Dietary Uses (21st Session)	21–25 September.	Berlin.
CX 732–5 ..	Codex Regional Coordinating Committee for North America and the South West Pacific (5th Session).	6–9 October	Seattle, WA.
CX 712–31	Codex Committee on Food Hygiene (31st Session)	26–30 October ..	Washington, DC.
CX 707–13	Codex Regional Coordinating Committee for Africa (13th Session)	3–6 November ..	Harare.
CX 708–17	Codex Committee on Cocoa Products and Chocolate (17th Session)	16–18 November.	Switzerland.
CX 719–6 ..	Codex Committee on Natural Mineral Waters (6th Session)	19–21 November.	Switzerland.
CX 715–22	Codex Committee on Methods of Analysis and Sampling (22nd Session)	23–27 November.	Budapest.
CX 725–11	Codex Regional Committee for Latin American and the Caribbean (11th Session)	8–11 December	Montevideo.
1999:			
CX 733–7 ..	Codex Committee on Food Import and Export Certification and Inspection (7th Session)	22–26 February	Melbourne.
CX 731–8 ..	Codex Committee on Fresh Fruits and Vegetables (8th Session)	1–5 March	Mexico City.
CX 709–16	Codex Committee on Fats and Oils (16th Session)	8–12 March	London.
CX 711–31	Codex Committee on Food Additives and Contaminants (31st Session)	22–26 March	The Hague.
CX 718–31	Codex Committee on Pesticide Residues (31st Session)	12–17 April	The Hague.
CX 714–27	Codex Committee on Food Labelling (27th Session)	19–23 April	Ottawa.
CX 716–13	Codex Committee on General Principles (14th Session)	26–30 April	Paris.
CX 702–46	Executive Committee of the Codex Alimentarius Commission (46th Session)	24–25 June	Rome.
CX 701–23	Codex Alimentarius Commission (23rd Session)	28 June–3 July	Rome.

[1] Adjourned sine die. The main tasks of these Committees are completed. However, the committees may be called to meet again if required.

TIMETABLE OF CODEX SESSIONS—Continued

[June 1998 through June 2000]

CX 727–12	Codex Regional Coordinating Committee for Asia (12th Session)	23–26 November.	Pukhet.
CX 712–32	Codex Committee of Food Hygiene (32nd Session)	29 November–December.	Washington, DC.
2000:			
CX 733–08	Codex Committee on Food Import and Export Certification and Inspection (8th Session)	21–25 February	TBA.
CX 703–04	Codex Committee on Milk and Milk Products (4th Session)	28 February–March.	New Zealand.
CX 711–32	Codex Committee on Food Additives and Contaminants (32nd Session)	20–24 March	The Hague.
CX 730–12	Codex Committee on Residues of Veterinary Drugs in Foods (12th Session)	28–31 March	TBA.
CX 716–15	Codex Committee on General Principles (15th Session)	10–14 April	Paris.
CX 718–32	Codex Committee on Pesticide Residues (32nd Session)	1–6 May	The Hague.
CX 714–28	Codex Committee on Food Labelling (28th Session)	8–12 May	Ottawa.
CX 722–24	Codex Committee on Fish and Fishery Products (24th Session)	5–9 June	Bergen.
CX 720–22	Codex Committee on Nutrition and Foods for Special Dietary Uses (22nd Session)	19–23 June	Berlin.
CX 702–47	Executive Committee of the Codex Alimentarius Commission (47th Session)	28–30 June	Geneva.

Attachment 4—Definitions for the Purpose of Codex Alimentarius

Words and phrases have specific meanings when used by the Codex Alimentarius. For the purposes of Codex, the following definitions apply:

1. *Food* means any substance, whether processed, semi-processed or raw, which is intended for human consumption, and includes drink, chewing gum, and any substance which has been used in the manufacture, preparation or treatment of ''food'' but does not include cosmetics or tobacco or substances used only as drugs.

2. *Food hygiene* comprises conditions and measures necessary for the production, processing, storage and distribution of food designed to ensure a safe, sound, wholesome product fit for human consumption.

3. *Food additive* means any substance not normally consumed as a food by itself and not normally used as a typical ingredient of the food, whether or not it has nutritive value, the intentional addition of which to food for a technological (including organoleptic) purpose in the manufacture, processing, preparation, treatment, packing, packaging, transport, or holding of such food results, or may be reasonably expected to result, (directly or indirectly) in it or its by-products becoming a component of or otherwise affecting the characteristics of such foods. The food additive term does not include ''contaminants'' or substances added to food for maintaining or improving nutritional qualities.

4. *Contaminant* means any substance not intentionally added to food, which is present in such food as a result of the production (including operations carried out in crop husbandry, animal husbandry, and veterinary medicine), manufacture, processing, preparation, treatment, packing, packaging, transport or holding of such food or as a result of environmental contamination. The term does not include insect fragments, rodent hairs and other extraneous matters.

5. *Pesticide* means any substance intended for preventing, destroying, attracting, repelling, or controlling any pest including unwanted species of plants or animals during the production, storage, transport, distribution and processing of food, agricultural commodities, or animal feeds or which may be administered to animals for the control of ectoparasites. The term includes substances intended for use as a plant-growth regulator, defoliant, desiccant, fruit thinning agent, or sprouting inhibitor and substances applied to crops either before of after harvest to protect the commodity from deterioration during storage and transport. The term pesticides excludes fertilizers, plant and animal nutrients, food additives, and animal drugs.

6. *Pesticide residue* means any specified substance in food, agricultural commodities, or animal feed resulting from the use of a pesticide. The term includes any derivatives of a pesticide, such as conversion products, metabolites, reaction products, and impurities considered to be of toxological significance.

7. *Good Agricultural Practice in the Use of Pesticides (GAP)* includes the nationally authorized safe uses of pesticides under actual conditions necessary for effective and reliable pest control. It encompasses a range of levels of pesticide applications up to the highest authorized use, applied in a manner that leaves a residue which is the smallest amount practicable.

Authorized safe uses are determined at the national level and include nationally registered or recommended uses, which take into account public and occupational health and environmental safety considerations.

Actual conditions include any stage in the production, storage, transport, distribution and processing of food commodities and animal feed.

8. *Codex Maximum Limit for Pesticide Residues (MRLP)* is the maximum concentration of a pesticide residue (expressed as mg/kg), recommended by the Codex Alimentarius Commission to be legally permitted in or on food commodities and animal feeds. MRLPs are based on their toxological affects and on GAP data and foods derived from commodities that comply with the respective MRLPs are intended to be toxologically acceptable.

Codex MRLPs, which are primarily intended to apply in international trade, are derived from reviews conducted by the JMPR following:

(a) Toxological assessment of the pesticide and its residue, and

(b) Review of residue data from supervised trials and supervised uses including those reflecting national good agricultural practices. Data from supervised trials conducted at the highest nationally recommended, authorized, or registered uses are included in the review. In order to accommodate variations in national pest control requirements, Codex MRLPs take into account the higher levels shown to arise in such supervised trials, which are considered to represent effective pest control practices.

Consideration of the various dietary residue intake estimates and determinations both at the national and international level in comparison with the ADI, should indicate that foods complying with Codex MRLPs are safe for human consumption.

9. *Veterinary Drug* means any substance applied or administered to any food-producing animal, such as meat or milk-producing animals,

poultry, fish or bees, whether used for therapeutic, prophylactic or diagnostic purposes or for modification of physiological functions or behavior.

10. *Residues of Veterinary Drugs* include the parent compounds and/or their metabolites in any edible portion of the animal product, and include residues of associated impurities of the veterinary drug concerned.

11. *Codex Maximum Limit for Residues of Veterinary Drugs (MRLVD)* is the maximum concentration of residue resulting from the use of a veterinary drug (expressed in mg/kg or mg/kg on a fresh weight basis) that is recommended by the Codex Alimentarius Commission to be legally permitted or recognized as acceptable in or on food.

An MRLVD is based on the type and amount of residue considered to be without any toxological hazard for human health as expressed by the Acceptable Daily Intake (ADI), or on the basis of a temporary ADI that utilizes an additional safety factor. An MRLVD also takes into account other relevant public health risks as well as food technological aspects.

When establishing an MRLVD, consideration is also given to residues that occur in food of plant origin and/or the environment. Furthermore, the MRLVD may be reduced to be consistent with good practices in the use of veterinary drugs and to the extent that practical and analytical methods are available.

12. *Good Practice in the Use of Veterinary Drugs (GPVD)* is the official recommended or authorized usage including withdrawal periods approved by national authorities, of veterinary drugs under practicable conditions.

13. *Processing Aid* means any substance or material, not including apparatus or utensils, not consumed as a food ingredient by itself, intentionally used in the processing of raw materials, foods or its ingredients, to fulfill a certain technological purpose during treatment or processing and which may result in the non-intentional but unavoidable presence of residues or derivatives in the final product.

Definitions of Risk Analysis Terms Related to Food Safety

Hazard: A biological, chemical or physical agent in, or condition of, food with the potential to cause an adverse health effect.

Risk: A function of the probability of an adverse health effect and the severity of that effect, consequential to a hazard(s) in food.

Risk analysis: A process consisting of three components: risk assessment, risk management and risk communication.

Risk assessment: A scientifically based process consisting of the following steps: (i) hazard identification, (ii) hazard characterization, (iii) exposure assessment, and (iv) risk characterization.

Hazard identification: The identification of biological, chemical, and physical agents capable of causing adverse health effects and which may be present in a particular food or group of foods.

Hazard characterization: The qualitative and/or quantitative evaluation of the nature of the adverse health effects associated with biological, chemical and physical agents that may be present in food. For chemical agents, a dose-response assessment should be performed. For biological or physical agents, a dose-response assessment should be performed if the data are obtainable.

Dose-response assessment: The determination of the relationship between the magnitude of exposure (dose) to a chemical, biological or physical agent and the severity and/or frequency of associated adverse health effects (response).

Exposure assessment: The qualitative and/or quantitative evaluation of the likely intake of biological, chemical, and physical agents via food as well as exposures from other sources if relevant.

Risk characterization: The qualitative and/or quantitative estimation, including attendant uncertainties, of the probability of occurrence and severity of known or potential adverse health effects in a given population based on hazard identification, hazard characterization and exposure assessment.

Risk management: The process of weighing policy alternatives in the light of the results of risk assessment and, if required, selecting and implementing appropriate control options, including regulatory measures.

Risk communication: The interactive exchange of information and opinions concerning risk among risk assessors, risk managers, consumers and other interested parties.

Attachment 5—Part 1

Uniform Procedure for the Elaboration of Codex Standards and Related texts

Steps 1, 2 and 3

(1) The Commission decides, taking into account the ''Criteria for the Establishment of Work Priorities and for the Establishment of Subsidiary Bodies,'' to elaborate a Worldwide Codex Standard and also decides which subsidiary body or other body should undertake the work. A decision to elaborate a Worldwide Codex Standard may also be taken by subsidiary bodies of the Commission in accordance with the above-mentioned criteria, subject to subsequent approval by the Commission or its Executive Committee at the earliest possible opportunity. In the case of Codex Regional Standards, the Commission shall base its decision on the proposal of the majority of members belonging to a given region or group of countries submitted at a session of the Codex Alimentarius Commission.

(2) The Secretariat arranges for the preparation of a proposed draft standard. In the case of Maximum Limits for Residues of Pesticides or Veterinary Drugs, the Secretariat distributes the recommendations for maximum limits, when available from the Joint Meetings of the FAO Panel of Experts on Pesticide Residues in Food and the Environment and the WHO Panel of Experts on Pesticide Residues (JMPR), or the Joint FAO/WHO Expert Committee on Food Additives (JECFA). In the cases of milk and milk products or individual standards for cheeses, the Secretariat distributes the recommendations of the International Dairy Federation (IDF).

(3) The proposed draft standard is sent to members of the Commission and interested international organizations for comment on all aspects including possible implications of the proposed draft standard for their economic interests.

Step 4

The comments received are sent by the Secretariat to the subsidiary body or other body concerned which has the power to consider such comments and to amend the proposed draft standard.

Step 5 [1]

The proposed draft standard is submitted through the Secretariat to the Commission or to the Executive Committee with a view to its adoption as a draft standard. When making any decision at this step, the Commission or the Executive Committee will give due consideration to any comments that may be submitted by any of its members

[1] Without prejudice to any decision that may be taken by the Commission at Step 5, the proposed draft standard may be sent by the Secretariat for government comment prior to its consideration at Step 5, when, in the opinion of he subsidiary body or other body concerned, the time between the relevant session of the Commission and the subsequent session of the subsidiary or other body concerned requires such actions in order to advance the work.

regarding the implications which the proposed draft standard or any provisions of the standard may have for their economic interests. In the case of Regional Standards, all members of the Commission may present their comments, take part in the debate and propose amendments, but only the majority of the Members of the region or group of countries concerned attending the session can decide to amend or adopt the draft. When making any decisions at this step, the members of the region or group of countries concerned will give due consideration to any comments that may be submitted by any of the members of the Commission regarding the implications which the proposed draft standard or any provisions of the proposed draft standard may have for their economic interests.

Step 6

The draft standard is sent by the Secretariat to all members and interested international organizations for comment on all aspects, including possible implications of the draft standard for their economic interests.

Step 7

The comments received are sent by the Secretariat to the subsidiary body or other body concerned, which has the power to consider such comments and amend the draft standard.

Step 8

The draft standard is submitted through the Secretariat to the Commission together with any written proposals received from members and interested international organizations for amendments at Step 8 with a view to its adoption as a Codex Standard. In the case of Regional standards, all members and interested international organizations may present their comments, take part in the debate and propose amendments but only the majority of members of the region or group of countries concerned attending the session can decide to amend and adopt the draft.

Part 2

Uniform Accelerated Procedure for the Elaboration of Codex Standards and Related Texts

Steps 1, 2 and 3

(1) The Commission or the Executive Committee between Commission sessions, on the basis of a two-thirds majority of votes cast, taking into account the ''Criteria for the Establishment of Work Priorities and for the Establishment of Subsidiary Bodies'', shall identify those standards which shall be the subject of an accelerated elaboration process. The identification of such standards may also be made by subsidiary bodies of the Commission, on the basis of a two-thirds majority of votes cast, subject to confirmation at the earliest opportunity by the Commission or its Executive Committee by a two-thirds majority of votes cast.

(2) The Secretariat arranges for the preparation of a proposed draft standard. In the case of Maximum Limits for Residues of Pesticides or Veterinary Drugs, the Secretariat distributes the recommendations for maximum limits, when available from the Joint Meetings of the FAO Panel of Experts on Pesticide Residues in Food and the Environment and the WHO Panel of Experts on Pesticide Residues (JMPR), or the Joint FAO/WHO Expert Committee on Food Additives (JECFA). In the cases of milk and milk products or individual standards for cheeses, the Secretariat distributes the recommendations of the International Dairy Federation (IDF).

(3) The proposed draft standard is sent to Members of the Commission and interested international organizations for comment on all aspects including possible implications of the proposed draft standard for their economic interests. When standards are subject to an accelerated procedure, this fact shall be notified to the Members of the Commission and the interested international organizations.

Step 4

The comments received are sent by the Secretariat to the subsidiary body or other body concerned which has the power to consider such comments and to amend the proposed draft standard.

Step 5

In the case of standards identified as being subject to an accelerated elaboration procedure, the draft standard is submitted through the Secretariat to the Commission together with any written proposals received from Members and interested international organizations for amendments with a view to its adoption as a Codex standard. In taking any decision at this step, the Commission will give due consideration to any comments that may be submitted by any of its Members regarding the implications which the proposed draft standard or any provisions thereof may have for their economic interests.

Attachment 6

Nature of Codex Standards

Codex standards contain requirements for food aimed at ensuring for the consumer a sound, wholesome food product free from adulteration, and correctly labelled. A Codex standard for any food or foods should be drawn up in accordance with the Format for Codex Commodity Standards and contain, as appropriate, the criteria listed therein.

Format for Codex Commodity Standards Including Standards Elaborated Under the Code of Principles Concerning Milk and Milk Products

Introduction

The format is also intended for use as a guide by the subsidiary bodies of the Codex Alimentarius Commission in presenting their standards, with the object of achieving, as far as possible, a uniform presentation of commodity standards. The format also indicates the statements which should be included in standards as appropriate under the relevant headings of the standard. The sections of the format required to be completed for a standard are only those provisions that are appropriate to an international standard for the food in question.

Name of the Standard
Scope
Description
Essential Composition and Quality Factors
Food Additives
Contaminants
Hygiene
Weights and Measures
Labelling
Methods of Analysis and Sampling

Format for Codex Standards

Name of the Standard

The name of the standard should be clear and as concise as possible. It should usually be the common name by which the food covered by the standard is known or, if more than one food is dealt with in the standard, by a generic name covering them all. If a fully informative title is inordinately long, a subtitle could be added.

Scope

This section should contain a clear, concise statement as to the food or foods to which the standard is applicable unless the name of the standard clearly and concisely identifies the food or foods. A generic standard covering more than one specific product should clearly identify the specific products to which the standard applies.

Description

This section should contain a definition of the product or products with an indication, where appropriate, of the raw materials from which the product or products are derived and any necessary references to processes of manufacture. The description may also include references to types and styles of product and to type of pack. The description may also include additional definitions when these additional definitions are required to clarify the meaning of the standard.

Essential Composition and Quality Factors

This section should contain all quantitative and other requirements as to composition including, where necessary, identity characteristics, provisions on packing media and requirements as to compulsory and optional ingredients. It should also include quality factors that are essential for the designation, definition, or composition of the product concerned. Such factors could include the quality of the raw material, with the object of protecting the health of the consumer, provisions on taste, odor, color, and texture which may be apprehended by the senses, and basic quality criteria for the finished products, with the object of preventing fraud. This section may refer to tolerances for defects, such as blemishes or imperfect material, but this information should be contained in appendix to the standard or in another advisory text.

Food Additives

This section should contain the names of the additives permitted and, where appropriate, the maximum amount permitted in the food. It should be prepared in accordance with guidance given on page 76 of the Codex Procedural Manual and may take the following form: ''The following provisions in respect of food additives and their specifications as contained in section * * * of the Codex Alimentarius are subject to endorsement [have been endorsed] by the Codex Committee on Food Additives and Contaminants.''

A tabulation should then follow, viz.: ''*Name of additive, maximum level* (in percentage or mg/kg).''

Contaminants

(a) *Pesticide Residues:* This section should include, by reference, any levels for pesticide residues that have been established by the Codex Committee on Pesticide Residues for the product concerned.

(b) *Other Contaminants:* In addition, this section should contain the names of other contaminants and where appropriate the maximum level permitted in the food, and the text to appear in the standard may take the following form: ''The following provisions in respect of contaminants, other than pesticide residues, are subject to endorsement [have been endorsed] by the Codex Committee on Food Additives and Contaminants.''

A tabulation should then follow, viz.: ''*Name of contaminant, maximum level* (in percentage or mg/kg).''

Hygiene

Any specific mandatory hygiene provisions considered necessary should be included in this section. They should be prepared in accordance with the guidance given on page 78 of the Codex Procedural Manual. Reference should also be made to applicable codes of hygienic practice. Any parts of such codes, including in particular any end-product specifications, should be set out in the standard, if it is considered necessary that they should be made mandatory. The following statement should also appear: ''The following provisions in respect of the food hygiene of the product are subject to endorsement [have been endorsed] by the Codex Committee on Food Hygiene.''

Weights and Measures

This section should include all provisions, other than labelling provisions, relating to weights and measures, e.g. where appropriate, fill of container, weight, measure or count of units determined by an appropriate method of sampling and analysis. Weights and measures should be expressed in S.I. units. In the case of standards which include provisions for the sale of products in standardized amounts, e.g. multiples of 100 grams, S.I. units should be used, but this would not preclude additional statements in the standards of these standardized amounts in approximately similar amounts in other systems of weights and measures.

Labelling

This section should include all the labelling provisions contained in the standard and should be prepared in accordance with the guidance given on page 75 of the Codex Procedural Manual. Provisions should be included by reference to the General Standard for the Labelling of Prepackaged Foods. The section may also contain provisions which are exemptions from, additions to, or which are necessary for the interpretation of the General Standard in respect of the product concerned provided that these can be justified fully. The following statement should also appear: ''The following provisions in respect of the labelling of this product are subject to endorsement [have been endorsed] by the Codex Committee on Food Labelling.''

Methods of Analysis and Sampling

This section should include, either specifically or by reference, all methods of analysis and sampling considered necessary and should be prepared in accordance with the guidance given on page 79 of the Codex Procedural Manual. If two or more methods have been proved to be equivalent by the Codex Committee on Methods of Analysis and Sampling, these could be regarded as alternative and included in this section either specifically or by reference. The following statement should also appear: ''The methods of analysis and sampling described hereunder are to be endorsed [have been endorsed] by the Codex Committee on Methods of Analysis and Sampling.''

[FR Doc. 99–13353 Filed 5–25–99; 8:45 am]
BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Intent To Prepare an Environmental Impact Statement; Finger Mountain Timber Sale(s), Sitka Ranger District, Tongass National Forest, Sitka, AK

AGENCY: Forest Service, USDA.

ACTION: Notice of intent.

SUMMARY: The Department of Agriculture, Forest Service will prepare a Draft Environmental Impact Statement for the Finger Mountain Timber Sale(s) project, located on the Sitka Ranger District of the Tongass National Forest. This Notice of Intent revises the proposed action for the Finger Mountain project and the schedule for the decision described in the Notice of Intent published June 30, 1997 (**Federal Register**: Volume 62, Number 125, Pages 35145–351460), and in the Notice of Intent published July 23, 1997 (**Federal Register**: Volume 62, Number 141, Page 39498).

DATES: Comments concerning the scope of the analysis should be received in writing by June 25, 1999.

ADDRESSES: Send written comments to; Finger Mountain Planning Team, Sitka Ranger District, 204 Siginaka Way, Sitka, AK 99835.

FOR FURTHER INFORMATION CONTACT: Lisa Winn, Team Leader, or Bill Lorenz, Planning Group Leader, Sitka Ranger District, 204 Siginaka Way, Sitka, AK 99835, phone (907) 747–6671, fax (907) 747–4331, email 1winn/r10—chatham@fed.us, or blorenz/r10—chatham@fs. fed. us.

SUPPLEMENTARY INFORMATION: The new proposed action for the Finger Mountain Timber Sale(s) project includes the following: (1) Timber harvest and subsequent regeneration on approximately 936 acres of forested land resulting in the production of approximately 21.4 million board feet of sawlog and utility timber; (2) construction of approximately 9.8 miles of permanent road, 10.9 miles of temporary road, and reconstruction of approximately 13.4 miles of existing road; (3) construction of one new log transfer facility and reconstruction of one existing log transfer facility. This proposed action is one alternative for meeting the purpose and need for the project.

The Finger Mountain project area is now expected to provide between 10 and 25 million board feet of timber to the timber industry in one or more timber sales. The actual range of alternatives considered in the Environmental Impact Statement will be determined during analysis.

The purpose and need for the Finger Mountain project consist of the following four items: (1) To implement the direction contained in the Modified 1997 Tongass National Forest Land and Resource Management Plan and the 1999 Record of Decision, including goals, objectives, management prescriptions, and standards and guidelines; (2) to maintain wood production from suitable timber lands, providing a continuous supply of wood to meet societies needs; (3) to help provide a stable supply of timber from the Tongass National Forest which meets existing and potential market demand and is consistent with sound multiple use and sustained yield objectives; and (4) to help meet the desired future condition of the landscape as described by the Modified 1997 Forest Plan.

Public Comment

Federal, State, and local agencies, as well as individuals and organizations who may be interested in, or affected by, the proposed action are invited to participate in the scoping process. This process will determine the scope and significant issues to be analyzed in depth in the Environmental Impact Statement.

Following the publication of this notice, a scoping document will be mailed to interested people and organizations. The document will briefly describe the project and project area, the proposed action, and will invite public comment.

Following scoping, the interdisciplinary planning team will review comments received during the scoping period to determine which issues are significant and within the scope of this project. If issues are identified that were not previously noted, the team will develop alternatives that address all of the significant issues. Significant issues identified to date include potential effects on the following: (1) Wildlife requiring old-growth forest habitat, (2) subsistence opportunities, (3) scenic resources and recreation experiences. (4) marine environment from log transfer facilities and logging camps, and (5) economic opportunities for small-scale timber operators.

If no additional issues are identified, the team will proceed with the current alternative development already underway. One of the alternatives will be the ''No Action'' alternative, in which no additional timber harvest or road construction is proposed. Other alternatives will consider various levels and locations of timber harvest in response to issues and non-timber objectives. The team will then prepare a Draft Environmental Impact Statement which will display the alternatives and the direct, indirect, and cumulative effects of each alternative.

The Draft Environmental Impact Statement is expected to be filed with the Environmental Protection Agency by December, 1999. The comment period on the Draft Environmental Impact Statement will be 45 days from the date the Environmental Protection Agency publishes the Notice of Availability in the **Federal Register**. In addition to commenting on the proposed action and the Draft Environmental Impact Statement when it is released, agencies and other interested persons or groups are invited to write to or speak with Forest Service officials at any time during the planning process.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action or any other alternatives, comments on the Draft Environmental Impact Statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the Draft Environmental Impact Statement. Comments may also address the adequacy of the Draft Environmental Impact Statement or the merits of the alternatives formulated and discussed in the document. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act, 40 CFR 1503.3, in addressing these points.

Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR Parts 215 or 217. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under the FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trace secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without the name and address.

Decisions To Be Made

Fred S. Salinas, Assistant Forest Supervisor of the Tongass National Forest, is now the responsible official and will decide whether or not to authorize timber harvest within the Finger Mountain project area. In addition, if timber harvest will occur, he will determine the following: (1) whether the design of the timber sale(s) is consistent with meeting resource protection standards and guidelines in the Modified 1997 Forest Plan and the 1999 Record of Decision; (2) how much timber volume will be made available and what are the effects of the planned activities; (3) the location and design of the timber harvest units, log transfer facilities, and road system; (4) mitigation and monitoring required for sound resource management; (5) whether there is a significant possibility of a significant restriction on subsistence uses; and (6) road management objectives, including closures for resource protection and economics.

The Final Environmental Impact Statement and Record of Decision is expected to be released by June, 2000. The Responsible Official will make a

decision regarding this proposal after considering public comments, the environmental consequences displayed in the Final Environmental Impact Statement, and applicable laws, regulations, and policies. The decision and supporting reasons will be documented in the Record of Decision.

The Forest Service is seeking information and comments from Federal, State, and local agencies, as well as individuals and organizations who may be interested in, or affected by, the proposed action.

The Forest Service believes it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of Draft Environmental Impact Statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions: *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the Draft Environmental Impact Statement stage but that are not raised until after completion of the Final Environmental Impact Statement may be waived or dismissed by the courts; *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider and respond to them in the Final Environmental Impact Statement.

Dated: May 17, 1999.

John C. Sherrod,

Acting Assistant Forest Supervisor.

[FR Doc. 99–13404 Filed 5–25–99; 8:45 am]

BILLING CODE 3410–11–M

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 (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: Current Industrial Reports Program—Wave III (Mandatory).

Form Number(s): MQ313T, MA315D, MA327E, MA333D, MA333f, MA333J, MA334P.

Agency Approval Number: 0607–0476.

Type of Request: Revision of a currently approved collection.

Burden: 2,544 hours.

Number of Respondents: 2,867.

Avg Hours Per Response: 42 minutes.

Needs and Uses: The Census Bureau conducts a series of monthly, quarterly, and annual surveys as part of its Current Industrial Reports (CIR) program. The CIR surveys deal mainly with the quantity and value of shipments of particular products and occasionally with data on production and inventories; unfilled orders, receipts, stocks and consumption; and comparative data on domestic production, exports, and imports of the products they cover.

The information collected in the CIR program provides continuing and timely national statistical data on manufacturing. The results of these surveys are used extensively by individual firms, trade associations, and market analysts in planning or recommending marketing and legislative strategies.

The CIR program includes both mandatory and voluntary surveys. Typically, surveys conducted monthly and quarterly are voluntary and surveys conducted annually are mandatory. The frequency of collection is based on the cyclical nature of production, the need for frequent trade monitoring in particular industries, and the use of certain production data in Government economic indicator series. In some cases, companies reporting in the more frequent voluntary surveys that choose not to respond are subject to a special annual counterpart survey which is mandatory. Due to the large number of surveys in the CIR program, for clearance purposes we group the surveys into three Waves. The mandatory and voluntary surveys in each Wave are separately submitted (with the exception that mandatory counterpart surveys are included in the same request as their voluntary equivalents). Thus, a total of six clearances cover all of the surveys in the CIR program. One Wave (two separate clearance requests) is submitted for reclearance each year.

Affected Public: Businesses or other for-profit organizations.

Frequency: Quarterly and annually.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 U.S.C., Sections 81, 182, 224, and 225.

OMB Desk Officer: Linda Hutton, (202) 395–7858.

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 5033, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via Internet at LEngelme@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Linda Hutton, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: May 20, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–13313 Filed 5–25–99; 8:45 am]

BILLING CODE 3510–07–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 (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: Current Industrial Reports Program—Wave III (Voluntary).

Form Number(s): M336G, MQ313D, MA333U.

Agency Approval Number: 0607–0776.

Type of Request: Revision of a currently approved collection.

Burden: 699 hours.

Number of Respondents: 342.

Avg Hours Per Response: 31 minutes.

Needs and Uses: The Census Bureau conducts a series of monthly, quarterly, and annual surveys as part of its Current Industrial Reports (CIR) program. The CIR surveys deal mainly with the quantity and value of shipments of particular products and occasionally with data on production and inventories; unfilled orders, receipts, stocks and consumption; and comparative data on domestic production, exports, and imports of the products they cover.

The information collected in the CIR program provides continuing and timely national statistical data on manufacturing. The results of these surveys are used extensively by individual firms, trade associations, and market analysts in planning or recommending marketing and legislative strategies.

The CIR program includes both mandatory and voluntary surveys. Typically, surveys conducted monthly and quarterly are voluntary and surveys conducted annually are mandatory. The frequency of collection is based on the cyclical nature of production, the need for frequent trade monitoring in particular industries, and the use of certain production data in Government economic indicator series. In some cases, companies reporting in the more frequent voluntary surveys that choose not to respond are subject to a special annual counterpart survey which is mandatory. Due to the large number of surveys in the CIR program, for clearance purposes we group the surveys into three Waves. The mandatory and voluntary surveys in each Wave are separately submitted (with the exception that mandatory counterpart surveys are included in the same request as their voluntary equivalents). Thus, a total of six clearances cover all of the surveys in the CIR program. One Wave (two separate clearance requests) is submitted for reclearance each year.

Affected Public: Businesses or other for-profit organizations.

Frequency: Monthly, Quarterly, Annually.

Respondent's Obligation: Voluntary (Annual counterparts are Mandatory).

Legal Authority: Title 13 USC, Sections 182, 224, 225.

OMB Desk Officer: Linda Hutton, (202) 395–7858.

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 5033, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via Internet at LEngelme@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Linda Hutton, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: May 20, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–13314 Filed 5–25–99; 8:45 am]

BILLING CODE 3510–07–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: Minority Business Development Agency.

Title: Performance Database (formerly the Business Development Report (BDR) System), Phoenix (formerly Automated Business Enterprise Locator System (ABELS)) and the Opportunity Database Systems.

Agency Form Number: None.

OMB Approval Number: Formerly 0640–0002.

Type of Request: Reinstatement, with change, of a previously approved collection for which approval has expired.

Burden: 10,046 hours (46, 8,750 and 1,250 hours annually, respectively).

Number of Respondents: 40,046 (46, 35,000 and 5,000, respectively).

Avg. Hours per Response: 15 minutes.

Needs and Uses: The purpose of the Performance, Phoenix and Opportunity databases is to provide an electronic system for (1) entering the accomplishments (Performance) of MBDA's funded organizations, (2) entering minority-owned businesses doing business in the United States (Phoenix), and matching contract opportunities with eligible minority companies listed in the Phoenix database (Opportunity). Specific uses of the on-line Performance Database include:

The documentation of actual performance accomplishments of each funded organization compared with stated goals in its cooperative agreement with MBDA. The Performance database permits tracking of each funded organization's goals using a number of general and specific variables. The flexibility of the database permits new variables to be added as needed.

The verification of the summary performance accomplishments cited in narrative reports. Based on the results, performance data and other qualitative information obtained during MBDA quarterly monitoring will determine whether a specific cooperative agreement should be terminated or other actions are needed to improve performance.

The advantage of daily tracking of performance is that it will enable managers not only to terminate non-performing funded organizations but, more importantly, to address performance problems early in their development.

Identifies minority business clients receiving Agency-sponsored business development services in the form of management and technical assistance, the kind of assistance each receives, and the impact of that assistance on the growth and profitability of the client firms.

The preparation of special reports analyzing program activities and services by business types, industry trends, business starts, geographic profiles, successful capital and marketing opportunities, and other program elements.

The system permits client identification using a unique computer-assigned identifier for each funded organization. This identification is related to all client data fields. Number of clients assisted, types of assistance, number of hours of assistance, dollar amounts of loans, bonds and contracts, as well as a number of other variables are available for analysis on each client and funded organization.

MBDA requires this information to monitor, evaluate, and plan Agency programs which effectively enhance the development of the minority business sector.

Using information collected, MBDA produces ad hoc and recurring reports on its funded organizations, client services activities and accomplishments. Because MBDA's major funded activity is client service, the reports generated are a primary agency reporting and planning mechanism.

The data collection activity is comprised of the Time Phased Plan (TPP). This form, included in the funded organization's proposal in response to Agency solicitation in the **Federal Register**, provides the Agency with the grantee's actual accomplishments at the end of each reporting period. MBDA staff enters the grantee goals at the time of solicitation.

The purpose of this collection will be to establish a framework for assessing and evaluating projects' performance.

The Phoenix database constitutes the Minority Business Development Agency's (MBDA) listing of minority-owned businesses doing business in the United States. The Opportunity database contains public and private contract and other opportunities. The system matches contract opportunities with eligible minority companies listed in the Phoenix database. The information entered in the Phoenix database will be used to assist minority enterprises with marketing of goods and services.

The purpose for collecting this information is to enable entities with an interest in contracting with a minority firm to identify potential minority contractors according to various criteria.

MBDA uses the Phoenix database in conjunction with the Opportunity database to refer listed minority companies contracts and other business opportunities via E-mail and fax. The Opportunity database matches contract opportunities with eligible minority companies listed in the Phoenix database. Specific information on the Opportunity form, such as ''key words'' and NAICS codes, are compared with like information contained in the Phoenix database of minority companies. When a match is made, the eligible minority companies will be notified of any contract opportunity and the offeror of the opportunity will be notified of any eligible minority companies. These systems reside on Y2K (year 2000) compliant platforms connected to the service-provider network via the Internet.

Affective Public: Individuals, businesses or other for-profit and not-for-profit institutions.

Frequency: Annually.

Respondents Obligation: Required for benefit.

OMB Desk Officer: David Rostker (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, Departmental Forms Clearance Officer, (202) 482–3272, U.S. Department of Commerce, Office of the Chief Information Officer, Room 5300, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via Internet at LEngelme@doc.gov).

Written comments and recommendations for the proposed information collection should be sent to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, NW, Washington, DC 20503 within 30 days of publication.

Dated: May 19, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–13315 Filed 5–25–99; 8:45 am]

BILLING CODE 3510–21–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: Survey of U.S. Chemical Industry to Regarding Activities Involving Chemicals Identified in Schedule 2 of the Chemical Weapons Convention's Annex on Chemicals.

Agency Form Number: None.

OMB Approval Number: N/A.

Type of Request: New collection.

Burden: 100 hours.

Average Time Per Response: One hour.

Number of Respondents: 100 respondents.

Needs and Uses: This collection of information is necessary in order to assist efforts by U.S. government officials to ensure that the U.S. is and will be in compliance with certain provisions of the Chemical Weapons Convention (CWC) Treaty. This particular survey will be used to obtain data from those U.S. facilities that are believed to be engaged in the production, processing, or use of chemicals listed in Schedule 2 of the Agreement. It will be used to determine which of these facilities can be expected to have a Schedule 2 reporting or inspection obligation.

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

Respondent's Obligation: Voluntary.

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, Office of the Chief Information Officer (202) 482-3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, D.C. 20230 (or via Internet at LEngelme@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: May 20, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–13316 Filed 5–25–99; 8:45 am]

BILLING CODE 3510–33–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 and Critical Technology Assessment of the U.S. Industrial Base.

Agency Form Number: N/A.

OMB Approval Number: None.

Type of Request: New collection.

Burden: 24,000 hours.

Average Time Per Response: 4 hours per response.

Number of Respondents: 6,000 respondents.

Needs and Uses: Commerce/BXA, in coordination with other government agencies and private entities, conduct assessments of U.S. industries deemed critical to our national security. The information gathered is needed to assess the health and competitiveness as well as the needs of the targeted industry sector in order to maintain a strong U.S. industrial base.

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 (or via Internet at LEngelme@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: May 20, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–13391 Filed 5–25–99; 8:45 a.m.]

BILLING CODE 3510–JT–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: Procedure to Initiate an Investigation under the Trade Expansion Act of 1962, as amended.

Agency Form Number: N/A.

OMB Approval Number: None.

Type of Request: New collection.

Burden: 8 hours.

Average Time Per Response: 4 hours per response.

Number of Respondents: 2 respondents.

Needs and Uses: Commerce/BXA, upon request shall initiate an investigation to determine the effects of imports of certain commodities on the national security, and will make the findings known to the President for possible adjustments to imports through tariffs. The findings are made publicly available and are reported to Congress. The purpose of this collection is to account for the public burden associated with submitting such a request from any interested party, including other government departments or by the Secretary of Commerce.

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

Respondent's Obligation: Required for benefit.

OMB Desk Officer: David Rostker (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, Office of the Chief Information Officer, (202) 482–3272, Department of Commerce, Room 5327; 14th and Constitution Avenue, NW; Washington, DC 20230 (or via Internet at LEngelme@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, DC 20230.

Dated: May 20, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–13392 Filed 5–25–99; 8:45 am]

BILLING CODE 3510–JT–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: End-User Certificates for High Performance Computers to the People's Republic of China.

Agency Form Number: N/A.

OMB Approval Number: 0694–0112.

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

Burden: 75 hours.

Average Time Per Response: 15 minutes per response.

Number of Respondents: 300 respondents.

Needs and Uses: U.S. exporters of high performance computers to the PRC will obtain the end-user certificate in each transaction. BXA and other U.S. Government employees stationed at U.S. diplomatic posts will use the information to perform post-shipment verifications in the PRC on all ''high performance'' computers, even those shipped under a ''license exception'' category. Subsequently, BXA will use the information to produce the annual report to Congress.

Affected Public: Individuals, businesses or other for-profit and not-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, Office of the Chief Information Officer, (202) 482–3272, Department of Commerce, Room 5033, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at LEngelme@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, DC 20230.

Dated: May 20, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–13393 Filed 5–25–99; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

Environmental Technologies Trade Advisory Committee (ETTAC)

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: The Environmental Technologies Trade Advisory Committee will hold a plenary meeting from 9:30 a.m. to 3:00 p.m. on June 15, 1999. The ETTAC was created on May 31, 1994, to advise the U.S. government on policies and programs to expand U.S. exports of environmental products and services.

DATE AND PLACE: June 15, 1999. The meeting will take place in Room 3407 of the Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

The plenary meeting will review the objectives and agendas of its five subcommittee working groups: Market Access, Trade Impediments, Government Resources, Finance, and Outreach. There will also be a guest speaker and the group will work on creating its agenda for the next year.

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Jane Siegel, Department of Commerce, Office of Environmental Technologies Exports. Phone: 202–482–5225.

Dated: May 19, 1999.

E. Sage Chandler,

Office of Environmental Technologies Exports.

[FR Doc. 99–13418 Filed 5–25–99; 8:45 am]

BILLING CODE 3510–DR–U

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Notice of Government Owned Inventions Available for Licensing

AGENCY: National Institute of Standards and Technology Commerce.

SUMMARY: The inventions listed below are owned in whole or in part by the U.S. Government, as represented by the Department of Commerce. The Department of Commerce's ownership interest in the inventions are available for licensing in accordance with 35 U.S.C. 207 and 37 CFR Part 404 to achieve expeditious commercialization of results of Federally funded research and development.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on these inventions may be obtained by writing to: National Institute of Standards and Technology, Office of Technology Partnerships, Building 820, Room 213, Gaithersburg, MD 20899; Fax 301–869–2751. Any request for information should include the NIST Docket No. and Title for the relevant invention as indicated below.

SUPPLEMENTARY INFORMATION: NIST may enter into a Cooperative Research and Development Agreement (''CRADA'') with the licensee to perform further research on the inventions for purposes of commercialization. The inventions available for licensing are:

NIST Docket Number: 96–012US.

Title: A Device for Spatially-Resolved, High-Sensitivity Measurement of Optical Absorption Based on Intra-Cavity Total Reflection.

Abstract: This device permits the sensitive measurement of the optical absorption of matter in any state with diffraction-limited spatial resolution using total internal reflection within a high-Q (high-quality, low-loss) optical cavity. Its use provides qualitative and quantitative analysis of material composition and rates of chemical reactions. The device is especially well suited for thin film diagnostics.

NIST Docket Number: 96–025CIP.

Title: Intra-Cavity Total Reflection For High Sensitivity Measurement Of Optical Properties.

Abstract: An optical cavity resonator device is provided for conducting sensitive measurement of optical absorption by matter in any state with diffraction-limited spatial resolution through utilization of total internal reflection within a high-Q (high quality, low loss) optical cavity. Intracavity total reflection generates an evanescent wave that decays exponentially in space at a point external to the cavity, thereby providing a localized region where absorbing materials can be sensitively probed through alteration of the Q-factor of the otherwise isolated cavity. When a laser pulse is injected into the cavity and passes through the evanescent state, an amplitude loss resulting from absorption is incurred that reduces the lifetime of the pulse in the cavity. By monitoring the decay of the injected pulse, the absorption coefficient of manner within the evanescent wave region is accurately obtained from the decay time measurement.

NIST Docket Number: 97–040US.

Title: Superconducting Transition-Edge Sensor with Weak Links.

Abstract: The invention comprises the use of one or more localized weak-link structures, and damping on the electrical bias circuit, to improve the performance of superconducting transition-edge sensors (TES). the weak links generally comprise an area or areas having a reduction in cross-sectional geometry in an otherwise uniform bilayer TES applied to a substrate. The weak links control the dissipation of power in the sensor, making it quieter and making its electrical response smoother and less hysteretic. The TES response is also made smoother by implementing a damping circuit on the electrical output of the TES.

Raymond G. Kammer,

Director.

[FR Doc. 99–13426 Filed 5–25–99; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Announcing a Meeting of the Computer System Security and Privacy Advisory Board

AGENCY: National Institute of Standards and Technology.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that the Computer System Security and Privacy Advisory Board (CSSPAB) will meet Tuesday, June 8, 1999, Wednesday, June 9, 1999, from 9:00 a.m. to 5:00 p.m. and Thursday, June 10, 1999, from 9:00 a.m. to 2:00 p.m. The Advisory Board was established by the Computer Security Act of 1987 (P.L. 100–235) to advise the Secretary of Commerce and the Director of NIST on security and privacy issues pertaining to federal computer systems. All sessions will be open to the public.

DATES: The meeting will be held on June 8–9, 1999, from 9:00 a.m. to 5:00 p.m. and on June 10, 1999, from 9:00 a.m. until 2:00 p.m.

ADDRESSES: The meeting will take place at the National Institute of Standards and Technology, Gaithersburg, MD, NIST North building, 820 West Diamond Avenue, Room 618.

Agenda

—Welcome and Overview
—Issues Update and Briefings
—National Plan for Protecting the Infrastructure
—Online Privacy and Privacy Preferences Project (P3P)
—OMB/OIRA Brief
—CIO Security Committee Brief
—NIST Computer Security Updates
—GITS Security Committee Brief
—Pending Business/Discussion
—Public Participation
—Agenda Development for September 1999 Meeting
—Wrap-Up

Public Participation

The Board agenda will include a period of time, not to exceed thirty minutes, for oral comments and questions from the public. Each speaker will be limited to five minutes. Members of the public who are interested in speaking are asked to contact the Board Secretariat at the telephone number indicated below. In addition, written statements are invited and may be submitted to the Board at any time. Written statements should be directed to the CSSPAB Secretariat, Information Technology Laboratory, 100 Bureau Drive, Stop 8930, National Institute of Standards and Technology, Gaithersburg, MD 20899–8930. It would be appreciated if 35 copies of written material were submitted for distribution to the Board and attendees no later than June 7, 1999. Approximately 15 seats will be available for the public and media.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Roback, Board Secretariat, Information Technology Laboratory, National Institute of Standards and Technology, 100 Bureau Drive, Stop 8930, Gaithersburg, MD 20899–8930, telephone: (301) 975–3696.

Dated: May 17, 1999.

Karen H. Brown,

Deputy Director.

[FR Doc. 99–13337 Filed 5–25–99; 8:45 am]

BILLING CODE 3510–CN–M

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Naval Research Advisory Committee

AGENCY: Department of the Navy, DOD.

ACTION: Notice of meeting.

SUMMARY: The Naval Research Advisory Committee (NRAC) Panel on Optimized Surface Ship Manning will meet in an Executive Session to review and assess the impact of previous studies to optimize surface ship manning, personnel effectiveness, life quality, and review the status of current Department of the Navy (DON) programs and plans; and identify technology opportunities and policy implications for increasing the effectiveness of ship's personnel without sacrificing readiness or mission capability. The meeting will be open to the public.

DATES: The meeting will be held on Friday, May 28, 1999, from 1 p.m.to 5 p.m.

ADDRESSES: The meeting will be held at the Jorge Scientific Corporation, 1225 Jefferson Davis Highway, 6th Floor, Suite 600, Crystal Gateway Two, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Diane Mason-Muir, Program Director, Naval Research Advisory Committee, 800 North Quincy Street, Arlington, VA 22217–5660, telephone number: (703) 696–6769.

Authority: 5 U.S.C. App. 2.

Dated: May 11, 1999.

Saundra K. Melancon,

Paralegal Specialist, Office of the Judge Advocate General, Alternate Federal Register Liaison Officer.

[FR Doc. 99–13298 Filed 5–25–99; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

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: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507 (j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by June 2, 1999.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer: Department of Education, Office of Management and Budget; 725 17th Street, N.W., Room 10235, New Executive Office Building, Washington, D.C. 20503. Requests for copies of the proposed information collection request should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W. , Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651, or should be electronically mailed to the internet address Pat Sherrill@ed.gov, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (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 this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. 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. ED 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 respondents, including through the use of information technology.

Dated: May 20, 1999.

William E. Burrow,

Acting Leader, Information Management Group, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: New.

Title: Safe and Drug-free Schools and Communities—Alcohol and Other Drug Prevention Models on College Campuses Grant Competition.

Abstract: This program identifies and disseminates information about innovative and effective alcohol and other drug prevention programs at institutions of higher education.

Additional Information: The expedited collection of this information is essential to the mission of the Department to support the identification and dissemination of effective approaches to creating safe and drug-free learning environments at institutions of higher education. The reauthorization of the Higher Education Act (HEA), Section 120(f) establishes a national recognition awards program to identify ten innovative and effective alcohol and drug abuse prevention programs.

Frequency: Annually.

Affected Public: Not-for-profit institutions; State, local or Tribal Gov't; SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 50.

Burden Hours: 1,600.

[FR Doc. 99–13300 Filed 5–25–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Acting Leader, Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 25, 1999.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW, Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV. 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, D.C. 20202–4651, or should be electronically mailed to the internet address *Pat Sherrill@ed.gov*, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The 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.

Dated: May 20, 1999.

William E. Burrow,

Acting Leader, Information Management Group, Office of the Chief Information Officer.

Office of Student Financial Assistance Programs

Type of Review: Revision.
Title: Federal PLUS Loan Program Application Documents.
Frequency: On occasion.
Affected Public: Individuals or households; Businesses or other for-profits; Not-for-profit institutions.
Reporting and Recordkeeping Burden:
Responses: 100,000.
Burden Hours: 50,000.
Abstract: This application form and promissory note is the means by which a parent borrower applies for a Federal PLUS Loan and promises to repay the loan, and a school, lender, and guaranty agency certifies the parent borrower's eligibility to receive a PLUS loan.

Office of Student Financial Assistance Programs

Type of Review: New.
Title: Student Aid Internet Gateway (SAIG) Enrollment Document.
Frequency: On occasion.
Reporting and Recordkeeping Hour Burden:
Responses: 8,870.
Burden Hours: 2,925.
Abstract: The Student Aid Internet Gateway (SAIG) Enrollment Document will be used by postsecondary institutions, third-party, software providers, lenders, guaranty agencies, and state scholarship programs. This will allow participants to have electronic access, to receive and transmit, view and update student financial aid data. The Department will use this information on the enrollment form to assign customers a Student Aid Internet Gateway ID and associate Title IV services selected by the customer.

[FR Doc. 99–13299 Filed 5–25–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

President's Advisory Commission on Educational Excellence for Hispanic Americans; Meeting

AGENCY: President's Advisory Commission on Educational Excellent for Hispanic Americans, Department of Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets fourth the schedule and proposed agenda of a forthcoming meeting of the President's Advisory Commission on Educational Excellence for Hispanic Americans (Commission). Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act in order to notify the public of their opportunity to attend.

DATES AND TIMES: Thursday, June 3, 1999, 1 p.m.–5 p.m. (est).

ADDRESSES: Ford Foundation, 320 East 43rd Street, 11th Floor, New York, NY 10017.

FOR MORE INFORMATION CONTACT: Luis Rosero, Director of Communications, at 202–401–8459 (telephone), 202–401–8377 (FAX), luis__rosero@ed.gov (e-mail) or mail: U.S. Department of Education, 400 Maryland Avenue SW, Room 5E110; Washington, DC 20202–3601.

SUMMARY INFORMATION: The Commission was established under Executive Order 12900 (February 22, 1994) to provide the President and the Secretary of Education with advice on (1) the progress of Hispanic Americans toward achievement of the National Goals and other standards of educational accomplishment; (2) the development, monitoring, and coordination of Federal efforts to promote high-quality education for Hispanic Americans; (3) ways to increase, State, county, private sector and community involvement in improving education; and (4) ways to expand and compliment Federal education initiatives.

At the June 3rd meeting, the Commission will discuss assessment, Hispanic Serving Institutions (HSIs), and the work of the White House Initiative in implementing the recommendations made by the Commission. Specifically, the Commission Assessment Committee will present its plan to analyze and evaluate state data and policies related to assessment of English Language Learners (ELL) and issue a report card to the nation on the appropriateness and accuracy of the assessment of ELL and accountability for their learning.

The Commission will also address Hispanic Serving Institutions (HSIs) and the ongoing efforts by the White House Initiative to raise the nation's level of awareness about the role and capacity of HSIs to educate the Latino community. Joining the Commission to discuss HSIs will be Ricardo Fernandez, President, Lehman College.

Commissioners will participate in the White House Initiative conference Excelencia en Educacion: The Role of Parents in the Education of Their children. The conference takes place on June 4–5 in New York City on the campus of City College of New York.

Records of all Commission proceedings are available for public inspection at the White House Initiative, U.S. Department of Education, 400 Maryland Ave., SW Room 5E110, Washington, DC 20202 from 9:00 a.m. to 5:00 p.m. (est).

Dated: May 18, 1999.

G. Mario Moreno,

Assistant Secretary, Office of Intergovernmental and Interagency Affairs.

[FR Doc. 99–13209 Filed 5–24–99; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

[Docket No. EA–210]

Application To Export Electric Energy; PP&L EnergyPlus Company

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of Application.

SUMMARY: PP&L EnergyPlus Company (PP&L EnergyPlus) has applied for authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before June 25, 1999.

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

FOR FURTHER INFORMATION CONTACT: Xavier Puslowski (Program Office) 202–586–4708 or Michael Skinker (Program Attorney) 202–586–6667.

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

On May 4, 1999, the Office of Fossil Energy (FE) of the Department of Energy (DOE) received an application from PP&L EnergyPlus to transmit electric energy from the United States to Canada. PP&L EnergyPlus, a Pennsylvania limited liability company, is a power marketer that does not own or control any electric generation or transmission facilities nor does it have any franchised service territory in the United States.

PP&L EnergyPlus proposes to arrange for the delivery of electric energy to Canada over the international transmission facilities owned by Basin Electric Power Cooperative, Bonneville Power Administration, Citizens Utilities, Detroit Edison Company, Eastern Maine Electric Cooperative, Joint Owners of the Highgate Project, Maine Electric Power Company, Maine Public Service Company, Minnesota Power & Light, Inc., Minnkota Power Cooperative, New York Power Authority, Niagara Mohawk Power Corporation, Northern States Power, and Vermont Electric Transmission Company.

The construction of each of the international transmission facilities to be utilized by PP&L EnergyPlus, as more fully described in the application, has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

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). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above.

Comments on the PP&L EnergyPlus application to export electric energy to Canada should be clearly marked with Docket EA–210. Additional copies are to be filed directly with Jesse A. Dillion, Esq. Senior Counsel, PP&L, Inc., Two North Ninth Street, Allentown, PA 18101, and John F. Cotter, Sr. Vice President—Marketing, PP&L EnergyPlus Co., Two North Ninth Street, Allentown, PA 18101, and Douglas H. Rosenberg, Esq., Preston Gates & Ellis LLP, 5000 Columbia Center, 701 Fifth Avenue, Seattle, WA 98104–7078.

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

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at http://www.fe.doe.gov. Upon reaching the Fossil Energy Home page, select ''Regulatory Programs,'' then ''Electricity Regulation,'' and then ''Pending Proceedings'' from the options menus.

Issued in Washington, D.C., on May 20, 1999.

Anthony J. Como,

Manager, Electric Power Regulation, Office of Coal & Power Im/Ex, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 99–13395 Filed 5–25–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Paducah Gaseous Diffusion Plant Site Specific Advisory Board

AGENCY: Department of Energy (DOE).

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah Gaseous Diffusion Plant. 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: Thursday, June 17, 1999: 5:30 p.m.–8:30 p.m.

ADDRESSES: Paducah Information Age Park Resource Center, 2000 McCracken Boulevard, Paducah, Kentucky.

FOR FURTHER INFORMATION CONTACT: John D. Sheppard, Site Specific Advisory Board Coordinator, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001, (502) 441–6804.

SUPPLEMENTARY INFORMATION:

Purpose of the Board

The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration and waste management activities.

Tentative Agenda

5:30 p.m.—Call to order/Discussion

6:00 p.m.—Approve Meeting Minutes

6:05 p.m.—Public Comment/Questions

6:30 p.m.—Presentations

7:15 p.m.—Sub Committee Reports

8:15 p.m.—Administrative Issues

8:30 p.m.—Adjourn

Copies of the final agenda will be available at the meeting.

Public Participation

The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact John D. Sheppard at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments as the first item of the meeting agenda.

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 9:00 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available at the Department of Energy's Environmental Information Center and Reading Room at 175 Freedom Boulevard, Highway 60, Kevil, Kentucky between 8:00 a.m. and 5:00 p.m. on Monday thru Friday or by writing to John D. Sheppard, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001 or by calling him at (502) 441–6804.

Issued at Washington, DC on May 20, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–13398 Filed 5–25–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP96–213–010]

Columbia Gas Transmission Corporation; Notice of Amendment

May 20, 1999.

Take notice that on May 14, 1999, Columbia Gas Transmission Corporation (Columbia), 12801 Fair Lakes Parkway, Fairfax, Virginia 22033, filed in Docket No. CP96–213–010 an abbreviated application pursuant to Section 7(c) of the Natural Gas Act, as amended, to amend its certificates previously issued by the Commission in an ''Order Denying Rehearing and Issuing Certificates'' on May 14, 1997 and in amendment orders ''Order Amending Certificate'' on November 25, 1997, June 30, 1998 and April 2, 1999 in Docket Nos. CP96–213–000, et al., Columbia's Market Expansion Project (MEP) 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 (please call (202) 208–0400 for assistance).

By this amendment, Columbia proposes to further amend its authorization to modify certain authorized projects in its Coco and Crawford Storage Fields, located in Kanawha County, West Virginia and Hocking County, Ohio respectively. The proposed modifications will not impact any other key project items or system capacities for MEP services and will not increase previous total MEP estimated costs.

Any person desiring to be heard or to make any protest with reference to said application should, on or before June 10, 1999, 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 Rule 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.

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 without 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 certificate and abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Columbia to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 99–13357 Filed 5–25–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–209–005]

Koch Gateway Pipeline Company; Notice of Report

May 20, 1999.

Take notice that on May 17, 1999, Koch Gateway Pipeline Company (Koch) tendered for filing a report identifying the amount of the refunds received and the dates on which repayments were made as directed by FERC in Docket No. RP96–209–004.

In accordance with Section 154.502 of the Commission's Regulations, copies of this filing have been served upon all parties on the official service list created by the Secretary in this proceeding and Koch's customers, state commissions and other interested parties. In addition, copies of the instant filing are available during regular business hours for public inspection in Koch's offices, in Houston, Texas.

Any person desiring to protest this filing should file protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. 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. 99–13367 Filed 5–25–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. MG99–20–000]

National Fuel Gas Supply Corporation; Notice of Filing

May 20, 1999.

Take notice that on May 13, 1999, National Fuel Gas Supply Corporation (National Fuel) filed revised standards of conduct under Order Nos. 497 *et*

seq.,[1] Order Nos. 566 *et seq.*[2] and Order No. 599.[3]

National Fuel states that it has served copies of its filing on affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before June 4, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. 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. 99–13360 Filed 5–25–99; 8:45 am]

BILLING CODE 6717–01–M

[1] Order No. 497, 53 FR 22139 (June 14, 1988), FERC Stats. & Regs. 1986–1990 ¶ 30,820 (1988); Order No. 497–A, *order on rehearing*, 54 FR 52781 (December 22, 1989), FERC Stats. & Regs. 1986–1990 ¶ 30,868 (1989); Order No. 497–B, *order extending sunset date*, 55 FR 53291 (December 28, 1990), FERC Stats. & Regs. 1986–1990 ¶ 30,908 (1990); Order No. 497–C, *order extending sunset date*, 57 FR 9 (January 2, 1992), FERC Stats. & Regs. 1991–1996 ¶ 30,934 (1991) *rehearing denied*, 57 FR 5815 (February 18, 1992), 58 FERC ¶ 61,139 (1992); Tenneco Gas v. FERC (affirmed in part and remanded in part), 969 F.2d 1187 (D.C. Cir. 1992); Order No. 497–D, *order on remand and extending sunset date*, 57 FR 58978 (December 14, 1992), FERC Stats. & Regs. 1991–1996 ¶ 30,958 (December 4, 1992); Order No. 497–E, *order on rehearing and extending sunset date*, 59 FR 243 (January 4, 1994), FERC Stats. & Regs. 1991–1996 ¶ 30,987 (December 23, 1993); Order No. 497–F, *order denying rehearing and granting clarification*, 59 FR 15336 (April 1, 1994), 66 FERC ¶ 61,347 (March 24, 1994); and Order No. 497–G, *order extending sunset date*, 59 FR 32884 (June 27, 1994), FERC Stats. & Regs. 1991–1996 ¶ 30,996 (June 17, 1994).

[2] Standards of Conduct and Reporting Requirements for Transportation and Affiliate Transactions, Order No. 566, 59 FR 32885 (June 27, 1994), FERC Stats. & Regs. 1991–1996 ¶ 30,997 (June 17, 1994); Order No. 566–A, *order on rehearing*, 59 FR 52896 (October 20, 1994), 69 FERC ¶ 61,044 (October 14, 1994); Order No. 566–B, *order on rehearing*, 59 FR 65707, (December 21, 1994), 69 FERC ¶ 61,334 (December 14, 1994).

[3] Reporting Interstate Natural Gas Pipeline Marketing Affiliates on the Internet, Order No. 599, 63 FR 43075 (August 12, 1998), FERC Stats. & Regs. ¶ 31,064 (July 30, 1998).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–305–000]

Northern Border Pipeline Company; Notice of Petition for Limited Waiver of Tariff Provisions

May 20, 1999.

Take notice that on May 14, 1999, Northern Border Pipeline Company (Northern Border) petitioned the Federal Energy Regulatory Commission (Commission) for a limited waiver of Northern Border's FERC Gas Tariff, to the extent necessary, to allow Northern Border to suspend certain Shipper Deficiency or Overpayment and Utility Interest Adjustment provisions.

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

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. 99–13368 Filed 5–25–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–523–000]

Reliant Energy Gas Transmission Company; Notice of Request Under Blanket Authorization

May 20, 1999.

Take notice that on May 14, 1999, Reliant Energy Gas Transmission Company (Applicant), formerly NorAm Gas Transmission Company, 1111 Louisiana Street, Houston, Texas 77002–5231, filed in Docket No. CP99–523–000 a request pursuant to Sections 157.205, 157,211 and 157.216(b) of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211 and 157.216) for approval to abandon, construct and operate certain facilities in Louisiana, under Applicant's blanket certificate issued in Docket Nos. CP82–384–000 and CP82–384–001, pursuant to Section 7(c) of the Natural Gas Act (NGA), all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Applicant specifically proposes to abandon 3,219 feet of Line FM–52 in Bossier Parish, Louisiana from station number 71+19 to station number 39+00. Applicant further proposes to sell and transfer this segment of Line at net book value to Reliant Energy Arkla (Arkla), a division of Reliant Energy Incorporated. Arkla will operate this segment of Line as part of its low-pressure distribution system.

Applicant also proposes to relocate an existing four-inch meter station from station number 71+19 to station number 39+00, install a two-inch regulator, and 150 feet of six-inch pipe to continue service to Arkla. Applicant's construction and relocation costs are estimated to be $42,285, which will be paid for by Applicant.

Any person or the Commission's staff may, within 45 days of the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214), a motion to intervene and pursuant to Section 157.205 of the regulations under the Natural Gas Act (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefor, the proposed activities shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,

Secretary.

[FR Doc. 99–13358 Filed 5–25–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT99–30–001]

Reliant Energy Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

May 20, 1999.

Take notice that on May 13, 1999, Reliant Energy Gas Transmission Company (REGT), formerly NorAm Gas Transmission Company, tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following revised tariff sheet to be effective June 6, 1999:

Title Page

REGT states that the purpose of this supplemental filing is to reflect cancellation and supersession of its FERC Gas Tariff, Fourth revised Volume No. 1.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. 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. 99–13359 Filed 5–25–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–217–000]

Reliant Energy Gas Transmission Company; Notice of Corporate Name Change

May 20, 1999.

Take notice that on February 12, 1999, Reliant Energy Gas Transmission Company (REGT) tendered for filing in the above-captioned docket a notice concerning a change in its corporate name and a motion pursuant to the Natural Gas Act and Rule 212 of the Commission's Rule and Regulations to substitute the name of REGT for NorAm on all proceedings before the Commission. It is stated that REGT's four local distribution companies, formerly known as Houston Lighting & Power Company, Arkla, Entex and Minneqasco, will now be doing business under the names of Reliant Energy—HL&P, Reliant Energy—Arkla, Reliant Energy—Entex, and Reliant Energy—Minnegasco.

A copy of the filing is on file with the Commission and available for public inspection in the Public Reference Room. The 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. 99–13361 Filed 5–25–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–200–038]

Reliant Energy Gas Transmission Company; Notice of proposed Changes in FERC Gas Tariff

May 20, 1999.

Take notice that on May 14, 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 sheet to be effective May 15, 1999:

Original Sheet No. 7P

REGT states that the purpose of this filing is to reflect the implementation of a new negotiated rate transaction.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. 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. 99–13366 Filed 5–25–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER99–2157–000, ER99–2160–000, ER99–2161–000, ER99–2162–000, ER99–2168–000, ER99–2181–000, ER99–2198–000, ER99–2287–000, ER99–2329–000] (Not consolidated)

Notice of Issuance of Order

May 18, 1999.

Rocky Road Power, LLC, Astoria Power LLC, Arthur Kill Power LLC, Huntley Power LLC, Dunkirk Power LLC, SIGCORP Energy Services, LLC, Otter Tail Power Company, Black Hills Corporation, South Eastern Electric Development Corporation.

Rocky Road Power, LLC, Astoria Power LLC, Arthur Hill Power LLC, Huntley Power LLC, Dunkirk Power LLC, SIGCORP Energy Services, LLC, Otter Tail Power Company, Black Hills Corporation, and South Eastern Electric Development Corporation (hereafter, ''the Applicants'') filed with the Commission rate schedules in the above-captioned proceedings, respectively, under which the Applicants will engage in wholesale electric power and energy transactions at market-based rates, and for certain waivers and authorizations. In particular, certain of the Applicants may also have requested in their respective applications that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by the Applicants. On May 12, 1999, the Commission issued an order that accepted the rate schedules for sales of capacity and energy at market-based rates (Order), in the above-docketed proceedings.

The Commission's May 12, 1999, Order granted, for those Applicants that sought such approval, their request for blanket approval under Part 34, subject to the conditions found in Appendix B in Ordering Paragraphs (2), (3), and (5):

(2) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by the Applicants should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426,

in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(3) Absent a request to be heard within the period set forth in Ordering Paragraph (2) above, if the Applicants have requested such authorization, the Applicants are hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of the Applicants, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(5) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of the Applicants' issuances of securities or assumptions of liabilities. * * *

Notice is hereby given that the deadline for filing motions to intervene or protest, as set forth above, is June 12, 1999.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426.

David P. Boergers,

Secretary.

[FR Doc. 99–13372 Filed 5–25–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–306–000]

Trunkline Gas Company; Notice of Proposed Changes in FERC Gas Tariff

May 20, 1999.

Take notice that on May 14, 1999, Trunkline Gas Company (Trunkline) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to be effective June 14, 1999:

First Revised Sheet No. 331M
Original Sheet No. 331M.01

Trunkline states that the purpose of this filing, made in accordance with the provisions of section 154.204 of the Commission's Regulations, is to modify Trunkline's pro forma service agreement for Flexible Field Zone Rate Schedule FFZ to provide for specific types of discounts that Trunkline may agree to enter into with its shippers.

Trunkline states that a copy of this filing is available for public inspection during regular business hours at Trunkline's office at 5400 Westheimer Court, Houston, Texas 77056–5310. In addition, 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. 99–13369 Filed 5–25–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–307–000]

Trunkline LNG Company; Notice of Proposed Changes in FERC Gas Tariff

May 20, 1999.

Take notice that on May 14, 1999, Trunkline LNG Company (TLNG) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1–A, the following tariff sheets to be effective June 14, 1999:

First Revised Sheet No. 151
Original Sheet No. 151A
First Revised Sheet No. 156
Original Sheet No. 156A

TLNG states that the purpose of this filing, made in accordance with the provisions of Section 154.204 of the Commission's Regulations, is to modify TLNG's pro forma service agreements for Firm Terminal Service under Rate Schedules FTS and Interruptible Terminal Service under Rate Schedule ITS to provide for specific types of discounts that TLNG may agree to enter into with its shippers.

TLNG states that a copy of this filing is available for public inspection during regular business hours at TLNG's office at 5400 Westheimer Court, Houston, Texas 77056–5310. In addition, 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, 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. 99–13370 Filed 5–25–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG99–143–000, et al.]

Front Range Energy Associates, L.L.C., et al. Electric Rate and Corporate Regulation Filings

May 18, 1999.

Take notice that the following filings have been made with the Commission:

1. Front Range Energy Associates, L.L.C.

[Docket No. EG99–143–000]

Take notice that on May 7, 1999, Front Range Energy Associates, L.L.C., 1225 17th Street, Suite 600, Denver, Colorado 80202, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's Regulations.

Front Range is a Delaware limited liability company owned by Quixx

Mountain Holdings, L.L.C., a Delaware limited liability company, and FR Holdings, L.L.C., a Colorado limited liability company. Front Range will initially own and operate a natural gas-fired simple cycle electric energy generation facility located on a site in Fort Lupton, Colorado, having a net design power output of approximately 164 MW.

Comment date: June 8, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Fibertek Energy, LLC

[Docket No. EG99–148–000]

Take notice that on May 14, 1999, Fibertek Energy, LLC (Applicant), with its principal office at 56 Industrial Drive, Syracuse, New York 13204, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to section 32 of the Public Utility Holding Company Act of 1935 and part 365 of the Commission's regulations.

Applicant states that it is and will be engaged in owning and operating the Fibertek Energy, LLC project consisting of an electric generation facility located in the Village of Solvay, New York, (the Eligible Facility), with a maximum net generating capacity of approximately 80 megawatts, and related transmission and interconnection facilities. Electric energy produced by the Eligible Facility is sold exclusively at wholesale.

Comment date: May 5, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. Barton Villages, Inc., Village of Enosburg Falls Water & Light Department, Village of Orleans, and Village of Swanton, Vermont v. Citizens Utilities Company

[Docket No. EL92–33–006]

Take notice that on May 5, 1999, Citizens Utilities Company (Citizens) tendered for filing in compliance with the Commission's April 5, 1999 order in the above-referenced proceeding, previously unfiled pre-1983 agreements subject to the Villages' complaint.

Comment date: June 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. Statoil Energy Trading, Inc.; Statoil Energy Trading, Inc.; El Paso Power Services Company, Duke/Louis Dreyfus, L.L.C.; NP Energy, Inc.; and Duke Energy Trading and Marketing, L.L.C.

[Docket Nos. ER94–964–022, ER97–4381–002, ER95–428–018, ER96–108–017, ER97–1315–010, and ER96–2921–014]

Take notice that on May 3, 1999 the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

5. PS Energy Group, Inc.; Alliance Strategies; Cinergy Capital & Trading, Inc.; DTE-Coenergy L.L.C.; EnerZ Corporation; Enerserve, L.C.; CinCap IV, LLC; The Montana Power Trading and Marketing Company; Amerada Hess Corporation; Enova Energy, Inc.; Mid-American Power LLC; CinCap V, LLC; and River City Energy, Inc.

[Docket Nos. ER95–266–017, ER95–1381–012, ER93–730–012, ER97–3835–006, ER96–3064–012, ER96–182–014, ER98–421–006, ER97–399–010, ER97–2153–008, ER96–2372–015, ER96–1858–012, ER98–4055–003, and ER99–823–001]

Take notice that on May 4, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

6. IEP Power Marketing, LLC; Energy Resource Marketing Inc.; andWPS Energy Services, Inc.

[Docket Nos. ER95–802–016, ER94–1580–018, and ER96–1088–024]

Take notice that on May 10, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

7. Hinson Power Company; British Columbia Power Exchange Corporation; Fortistar Power Marketing LLC; Cogentrix Energy Power Marketing, Inc.; Pacific Energy & Development Corporation; and Strategic Power Management, Inc.

[Docket Nos. ER95–1314–016, ER97–4024–008, ER98–3393–002, ER95–1739–015, ER98–1824–005, and ER96–2591–011]

Take notice that on May 6, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

8. TransAlta Energy Marketing Corp.; TransAlta Energy Marketing (U.S.) Inc.; and Strategic Energy Ltd.

[Docket Nos. ER96–1316–012, ER98–3184–003, and ER96–3107–010]

Take notice that on May 13, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

9. Thicksten Grimm Burgum, and Monterey Consulting Associates, Incorporated

[Docket Nos. ER96–2241–010 and ER96–2143–009]

Take notice that on May 4, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

10. Tri-Valley Corporation; Alternate Power Source, Inc.; and Cinergy Services, Incorporated; GDK

[Docket Nos. ER97–3428–006, ER96–1145–010, ER99–2076–001, and ER96–1735–011]

Take notice that on May 14, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room

or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

11. First Power, L.L.C.; Southwestern Power Marketers Incorporated; GPU Advanced Resources, Inc.; GPU Advanced Resources, Inc.; NUI Corp.-NUI Energy Brokers, Inc.; Horizon Energy Company; and Cargill-Alliant, LLC

[Docket Nos. ER97–3580–007, ER97–2529–004, ER97–3666–008, ER97–3666–009, ER96–2580–011, ER98–380–008, and ER97–4273–007]

Take notice that on May 7, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

12. CL Power Sales Fifteen, L.L.C. and CL Power Sales fifteen, L.L.C.

[Docket Nos. ER99–890–001 and ER99–892–001]

Take notice that on April 30, 1999 the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

13. Entergy Services, Inc.; USGen New England, Inc.; and Pittsfield Generating Company, L.P.

[Docket Nos. ER99–2772–000, ER99–2787–000, and ER99–2788–000]

Take notice that on May 3, 1999, the above-mentioned affiliated power producers and/or public utilities filed their quarterly reports for the quarter ending March 31, 1999.

Comment date: June 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Mobile Energy Services Company, L.L.C.; and Niagara Mohawk Power Corporation

[Docket Nos. ER99–2827–000 and ER99–2836–000]

Take notice that on May 5, 1999, the above-mentioned affiliated power producers and/or public utilities filed their quarterly reports for the quarter ending March 31, 1999.

Comment date: June 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. The Cincinnati Gas & Electric Company and PSI Energy, Inc. and Great Bay Power Corporation

[Docket Nos. ER99–2828–000 and ER99–2829–000]

Take notice that on May 4, 1999, the above-mentioned affiliated power producers and/or public utilities filed their quarterly reports for the quarter ending March 31, 1999.

Comment date: June 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Long Beach Generation LLC; El Segundo Power, LLC; and Golden Spread Electric Cooperative, Inc.

[Docket Nos. ER99–2880–000, ER99–2881–000, and ER99–2882–000]

Take notice that on May 7, 1999, the above-mentioned affiliated power producers and/or public utilities filed their quarterly reports for the quarter ending March 31, 1999.

Comment date: June 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. California Power Exchange Corporation

[Docket No. ER99–1262–000]

Take notice that on May 7, 1999 in Docket No. ER99–1262–000, the Commission authorized the California Power Exchange Corporation to conduct an experimental deviation from the Hour-Ahead timeline contained in the PX's FERC-authorized tariff in order to test the efficiency benefits of a Day-of market timeline until April 17, 1999, to be followed by a one-month evaluation period. On May 7, 1999, the PX filed in the above docket to request an extension of the experimental program until November 17, 1999. The PX requires more data, particularly during the peak summer period, to properly evaluate the experiment.

The PX states that it has served copies of its filing on the PX Participants and on the California Public Utilities Commission. The filing also has been posted on the PX website at http://www.calpx.com.

Comment date: May 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Wisconsin Electric Power Company

[Docket No. ER99–2900–000]

Take notice that on May 11, 1999, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing revisions to its Coordination Sales Tariff (FERC Electric Tariff, Original Volume No. 2). Two new service schedules D and E are being proposed in response to the industry efforts to develop and implement regional congestion management programs.

Wisconsin Electric respectfully requests an effective date June 1, 1999. Wisconsin Electric requests waiver of the Commission's advance notice requirements.

Copies of the filing have been served on all current customers under the Coordination Sales Tariff, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: May 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. West Texas Utilities Company

[Docket No. ER97–326–000]

Take notice that on May 11, 1999, West Texas Utilities Company (WTU), tendered for filing in the above-referenced docket revisions to the Power Supply Agreement between WTU and the City of Weatherford, Texas.

Comment date: May 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. Southern California Edison Company

[Docket No. ER99–2847–000]

Take notice that on May 5, 1999, Southern California Edison Company, tendered for filing notice that effective April 1, 1998, according to the terms of the Settlement and Termination Agreement between Southern California Edison Company and Sacramento Municipal Utility District, FERC Rate Schedule Nos. 238 and 335 effective August 2, 1989, and October 1, 1994, respectively, and filed with the Federal Energy Regulatory Commission by Southern California Edison Company are to be canceled.

Copies of the proposed cancellation have been served upon the Sacramento Municipal Utility District and the Public Utilities Commission of the State of California.

Comment date: May 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

20. Full Power Corporation

[Docket No. ER99–2540–000]

Take notice that on May 4, 1999, Full Power Corporation tendered for filing, pursuant to Rule 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385. 207, Amendment No. 1 to its pending proposed FERC Electric Rate Schedule

No. 1, waiver of certain of the Commission's regulations under the Federal Power Act (FPA), and grant of certain blanket approvals, all as more particularly described in the Amendment to its pending Application for waivers and blanket approvals under various regulations of the Commission, and an order accepting its Rate Schedule No. 1, to be effective June 15, 1999, or the date that the Commission issues an order in this proceeding, whichever is earlier. Alliance intends to engage in electric energy and capacity transactions as a marketer.

Comment date: May 24, 1999, in accordance with Standard Paragraph E at the end of this notice.

21. PJM Interconnection, L.L.C.

[Docket No. ER99–2893–000]

Take notice that on May 11, 1999, PJM Interconnection, L.L.C. (PJM), tendered for filing an amendments to Schedule 11 (PJM Capacity Credit Markets) of the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. and on behalf of the PJM Reliability Committee, amendments to the Reliability Assurance Agreement Among Load Serving Entities In The PJM Control Area.

PJM requests a waiver of the Commission's notice requirements and an effective date of June 1, 1999, for the amendments to both agreements.

Copies of this filing were served upon all PJM Members and the electric regulatory commissions in the PJM Control Area.

Comment date: May 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

22. Amoco Energy Trading Corporation

[Docket No. ER99–2895–000]

Take notice that on May 11, 1999, Amoco Energy Trading Corporation (AETC), petitioned the Federal Energy Regulatory Commission to grant certain blanket authorizations, to waive certain of the Commission's Regulations and to issue an order accepting AETC's FERC Electric Rate Schedule No. 1.

AETC intends to engage in power marketing transactions, purchasing and reselling electricity at wholesale. AETC does not own or control electric generating or transmission facilities or have any franchised electric service territories. AETC is a wholly-owned subsidiary of BP Amoco p.l.c.

Comment date: May 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

23. Peco Energy Company

[Docket No. ER99–2897–000]

Take notice that on May 11, 1999, PECO Energy Company (PECO), tendered for filing under Section 205 of the Federal Power Act, 16 U.S.C. S 792 *et seq.*, an Agreement dated January 9, 1997 with Jersey Central Power & Light Company (JCP&L), doing business as GPU Energy under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff).

PECO requests an effective date of June 1, 1999, for the Agreement.

PECO states that copies of this filing have been supplied to JCP&L and to the Pennsylvania Public Utility Commission.

Comment date: May 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

24. PECO Energy Company

[Docket No. ER99–2898–000]

Taken notice that on May 11, 1999, PECO Energy Company (PECO), tendered for filing under Section 205 of the Federal Power Act, 16 U.S.C. 792 *et seq.*, a Transaction Agreement dated June 2, 1997 with Fox Islands Electric Cooperative, Inc. (FIEC) under PECO's FERC Electric Tariff Original Volume No. 1, (Tariff).

PECO requests an effective date of June 1, 1999, for the Agreement.

PECO states that copies of this filing have been supplied to FIEC and to the Pennsylvania Public Utility Commission.

Comment date: May 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

25. New Century Services, Inc.

[Docket No. ER99–2899–000]

Take notice that on May 11, 1999, New Century Services, Inc., on behalf of Cheyenne Light, Fuel and Power Company, Public Service Company of Colorado, and Southwestern Public Service Company (collectively Companies), tendered for filing a Service Agreement under their Joint Open Access Transmission Service Tariff for Non-Firm Point-to-Point Transmission Service between the Companies and Colorado River Storage Project (CSC of WAPA).

The Companies request that the Agreement be made effective on April 19, 1999.

Comment date: May 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

26. Northern Indiana Public Service Company

[Docket No. ER99–2894–000]

Take notice that on May 12, 1999, Northern Indiana Public Service Company tendered for filing an executed Standard Transmission Service Agreement for Non-Firm Point-to-Point Transmission Service between Northern Indiana Public Service Company and Enserch Energy Services, Inc., (Enserch).

Under the Transmission Service Agreement, Northern Indiana Public Service Company will provide Point-to-Point Transmission Service to Enserch pursuant to the Transmission Service Tariff filed by Northern Indiana Public Service Company in Docket No. OA96–47–000 and allowed to become effective by the Commission.

Northern Indiana Public Service Company has requested that the Service Agreement be allowed to become effective as of May 28, 1999.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: June 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with Federal 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 or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–13265 Filed 5–25–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Amendments of License and Soliciting Comments, Motions To Intervene, and Protests

May 20, 1999.

Take notice that the following applications have been filed: with the Commission and are available for public inspection.

a. *Type of Applications:* Amendments of license to permit the continuing operation of a total of six existing water intakes and associated facilities on project lands, each of which is capable of withdrawing in excess of 1.0 million gallons per day from the project reservoir for irrigation.

b. *Project Nos:* 2149–068 and 2149–075

c. *Dates Filed:* January 26, 1998 and October 16, 1998

d. *Applicant:* Public Utility District no. 1 of Douglas County, Washington.

e. *Name of Project:* Wells

f. *Location:* Okanogan County, Washington. The water withdrawal sites do not occupy federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a) to 825(r)

h. *Applicant Contact:* Mr. Gordon Brett, Property Supervisor, Public Utility District No. 1 of Douglas County, 1151 Valley Mall Parkway, East Wenatchee, WA 98802–4497 (509) 884–7191

i. *FERC Contact:* Any questions on this notice should be addressed to Jim Haimes at (202) 219–2780, or e-mail address: james.haimes@ferc.fed.us.

j. *Deadline for filing comments and or motions:* July 6, 1999

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

Please include the project number (P–2149–068 or P–2149–075) on any comments or motions filed.

k. *Description of Proposal:* The licensee, by letter filed on February 25, 1999, notified the Commission that it is amending the previously filed application for Project No. 2149–068. The revised application requests Commission authorization for the continuing operation of the following two existing water intakes at the Wells Project, each of which is owned and operated by Mr. Dan Pariseau: Site A, constructed in 1990, which irrigates approximately 120 acres of apple and cherry orchards; and Site C, also constructed in 1990, which irrigates about 230 acres of apple orchards.

By letter dated February 9, 1998, Mr. Pariseau informed the licensee that: (1) all the intakes at Site A and Site C are screened with one-eighth-inch, stainless steel sheet metal; (2) all screen areas there exceed the state's required unit screen area per unit water volume; and (3) all cross-screen water velocities are below those promulgated by the Washington State Department of Wildlife.

Further, the licensee, on October 16, 1998, filed an application for Project No. 2149–075, requesting the Commission's authorization to allow four other existing pump stations (Crane Orchards, Custom Orchards, RIF Development, and Fugachee-Wang) at the Wells Project to continue to withdraw water for orchard irrigation.

l. *Locations of the application:* copies of the applications are available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, N.E., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The applications also may be viewed on the Web at http//www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). Copies of the application also are available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list for either or both of the proposed actions should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211 and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary at the above-mentioned address. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 99–13362 Filed 5–25–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Surrender of Exemption and Soliciting Comments, Motions To Intervene, and Protests

May 20, 1999.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Surrender of Exemption.

b. *Project No:* 4737–005.

c. *Date Filed:* May 7, 1999.

d. *Applicant:* Morgan J. Langan.

e. *Name of Project:* Trinity Alps.

f. *Location:* On Trinity Alps Creek in Trinity County, California. The project occupies federal lands within the Shasta-Trinity National Forests.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. § 791(a)–825(r).

h. *Applicant Contact:* Mr. Morgan J. Langan, 1750 Trinity Alps Road, Trinity Center, CA 96091 (530) 286–2205

i. *FERC Contact:* Any questions on this notice should be addressed to James Hunter at (202) 219–2839, or e-mail address: james.hunter@ferc.fed.us.

j. *Deadline for filing comments and or motions:* June 28, 1999

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington DC 20426.

Please include the project number (P–4737–005) on any comments or motions filed.

k. *Description of Project:* The project consists of: (1) a nonfunctional diversion structure on Trinity Alps Creek; (2) a 1,400-foot-long, unlined

ditch for conveying flows to East Branch Trinity Alps Creek; (3) a 6-foot-high, 28-foot-long, rock diversion structure on East Branch Trinity Alps Creek; (4) an unlined ditch and intake structure; (5) a 3,000-foot-long penstock varying in diameter from 1 to 2 feet; (6) a powerhouse containing a generating unit rated at 60 kilowatts; (7) a tailrace pipe returning flows to Stuart Fork Trinity River; (8) a 990-foot-long, 12 kilovolt transmission line, and (9) appurtenant facilities.

The exemptee requests surrender of the exemption from licensing, citing difficulties in obtaining the land and water rights needed to operate the project.

l. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. The application may be viewed on the web at http//www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the addresses in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211 and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTESTS'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary at the above-mentioned address. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 99–13363 Filed 5–25–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests and Comments

May 20, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11715–000.

c. *Date Filed:* April 1, 1999.

d. *Applicant:* Alaska Power & Telephone Company.

e. *Name of Project:* Connelly Lake Project.

f. *Location:* On Connelly Lake, Haines Borough, Alaska. About 61.6 acres of federal land under the jurisdiction of the Bureau of Land Management will be used for the transmission line.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C., § 791(a)–825(r).

h. *Applicant Contact:* Mr. Robert S. Grimm, Alaska Power & Telephone Company, 191 Otto Street, P.O. Box 3222, Port Townsend, WA 98368, Phone No. (360) 385–1733 ext. 3120.

i. *FERC Contact:* Robert Bell, robert.bell@ferc.fed.us, 202–219–2806.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission 888 First Street, NE, Washington, DC 20426.

The Commission's rules of practice and procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *The project would consist of following proposed facilities:* (1) A 575-foot-long, 48-foot-high rockfill dam; (2) an impoundment with a surface area of 160 acres, having a storage capacity of 4,700 acre-feet and a normal water surface elevation of 2,312 feet msl; (3) an intake structure; (4) a 6,188-foot-long, 30-inch-diameter steel penstock; (5) a powerhouse containing one generating unit with an installed capacity of 6,200-kW; (6) a tailrace; (7) a 14-mile-long, 34.5 kV transmission line; and (8) appurtenant facilities.

The project would have an annual generation of 24,000 MWh and project power would be sold to a local utility.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. The application may be viewed on the web at http://www.ferc.fed.us/rims.htm. Call (202) 208–2222 for assistance. A copy is also available for inspection and reproduction at the address in item h above.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or because the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.32(a) and (b)(1).

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application (see 18 CFR 4.36). Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must

conform with 18 CFR 4.32(a), (b), and (c).

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application for a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211 and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary and an additional copy must be sent to Director, Division of Project Review, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 99–13364 Filed 5–25–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests and Comments

May 20, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11726–000.

c. *Date filed:* April 14, 1999.

d. *Applicant:* Universal Electric Power Corp.

e. *Name of Project:* Buchanan Dam Project.

f. *Location:* On the Chowchill River, Madera County, California. Would use the existing U.S. Army Corps of Engineer's Buchanan Dam.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C., § 791(a)–825(r).

h. *Applicant Contact:* Mr. Ronald S. Feltenberger, Universal Electric Power Corp., 1145 Highbrook Street, Akron, OH 44301, Phone No. (360) 385–1733 ext. 3120.

i. *FERC Contact:* Robert Bell, robert.bell@ferc.fed.us, 202–219–2806.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's rules of practice of procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *The project would use the U.S. Army Corps of Engineer's Buchanan Dam and would consist of:* (1) a proposed intake; (2) four proposed 180-foot-long, 96-inch-diameter steel penstocks; (3) a proposed powerhouse with four generating units having a total installed capacity of 13 MW; (4) a proposed tailrace; (5) a proposed 600-foot-long, 14.7 kV transmission line; and (6) appurtenant facilities.

The project would have an annual generation of 80,000 MWh and project power would be sold to a local utility.

1. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. The application may be viewed on the web at http://www.ferc.fed.us/rims.htm. Call (202)208–2222 for assistance. A copy is also available for inspection and reproduction at the address in item h above.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.32(a) and (b)(1).

Preliminary Permit—Any qualified development application desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application (see 18 CFR 4.36). Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.32(a), (b), and (c).

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective application, and must include an unequivocal statement of intent to submit, if such an application

may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211 and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTEREVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary and an additional copy must be sent to Director, Division of Project Review, or at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Coments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 99–13365 Filed 5–25–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM96–1–012, et al.]

Standards for Business Practices of Interstate Natural Gas Pipelines; Notice of Extension of Time

May 20, 1999.

On April 1, 1999, the pipelines listed in the Appendix, in compliance with the Commission's order issued December 17, 1998,[1] in Docket No. RM96–1–012, filed reports detailing their level of compliance with Section 284.10(c)(2)(i) of the Commission's regulations.[2]

In Order No. 587–G, the Commission adopted section 284.10(c)(2)(i) of its regulations, which requires each interstate pipeline to enter into operational balancing agreements (OBAs) at all points of interconnection between its system and the system of another interstate or intrastate pipeline.[3] The December 17, 1998, order required each interstate pipeline to file, a statement as to how it has complied with the OBA requirement, by April 1, 1999.

The referenced pipelines state they have complied with the OBA requirement at some, but not all, of the interconnects on their systems, and request, or state they require, further time to negotiate and finalize the required OBA agreements at the remaining interconnects.

Upon consideration, notice is hereby given that the pipelines listed in the Appendix are granted a further extension of time to comply with 284.10(c)(2)(i) of the Commission's regulations until no later than June 30, 1999. On or before June 30, 1999, the pipelines listed herein must file a statement indicating whether they are in compliance with section 284.10(c)(2)(i) of the Commission's regulations, or if they are not in compliance, a detailed statement of the reasons they have been unable to execute the required OBAs. If any further extension is needed the pipeline should provide a detailed justification for the request.

David P. Boergers,

Secretary.

APPENDIX RM96–1–012, ET AL.

Company name	Docket No.
ANR Pipeline Company	RP98–285–002
Caprock Pipeline Company	RP98–303–002
Colorado Interstate Gas Company	RP98–251–005
Columbia Gas Transmission Corporation	RP98–255–001
Dauphin Island Gathering Partners	RP98–343–003
El Paso Natural Gas Company	RP98–311–001
Florida Gas Transmission Company	RP99–14–000
Garden Banks Pipeline, LLC	RP98–282–001
High Island Offshore System	RP98–245–003
KN Wattenberg Transmission, LLC	RP98–302–002
Kansas Pipeline Company	CP96–152–000
Mid Louisiana Gas Company	RP99–268–000
Mississippi Canyon Gas Pipeline, LLC	RP98–287–001
Natural Gas Pipeline Company of America	RP98–304–002
Norteno Pipeline Company	RP99–279–000
Northern Natural Gas Company	RP98–292–003

[1] Standards For Business Practices Of Interstate Natural Gas Pipelines, 85 FERC ¶ 61,371 (1998).

[2] 18 CFR 284.10(c)(2)(i).

[3] Standards For Business Practices Of Interstate Natural Gas Pipelines, Order No. 587–G, 63 FR 20072 (Apr. 23, 1998), III FERC Stats. & Regs. Regulations Preambles ¶ 31,062 (Apr. 16, 1998).

APPENDIX RM96–1–012, ET AL.—Continued

Company name	Docket No.
Northwest Pipeline Corporation	RP98–257–003
Paiute Pipeline Company	RP98–321–001
Questar Pipeline Company	RP98–263–003
Reliant Energy Gas Transmission Co	RP98–339–001
Sea Robin Pipeline Co	RP99–252–001
Stingray Pipeline Company	RP98–307–002
Southern Natural Gas Company	RP99–253–002
Tennessee Gas Pipeline Company	RP97–60–011
Texas Eastern Transmission Corporation	RP98–314–003
TransColorado Gas Transmission	RP98–320–001
Transcontinental Gas Pipe Line Corporation	RP98–344–004
U–T Offshore System	RP98–244–002
Williston Basin Interstate Pipeline Co	RP98–312–004

[FR Doc. 99–13371 Filed 5–25–99; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM93–11–000]

Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Act of 1992

May 18, 1999.

AGENCY: Federal Energy Regulatory Commission, Dept. of Energy.

ACTION: Notice of annual change in the producer price index for finished goods, minus one percent.

SUMMARY: The Commission is issuing the index that oil pipelines must apply to their July 1, 1998–June 30, 1999 rate ceiling levels to compute their rate ceiling levels for the period July 1, 1999 through June 30, 2000, in accordance with 18 CFR 342.3(d). This index, which is the percent change (expressed as a decimal) in the annual average Producer Price Index for Finished Goods from 1997 to 1998, minus one percent, is a negative 0.018346. Oil pipelines must multiply their July 1, 1998–June 30, 1999 rate ceiling levels by 0.981654 to compute their rate ceiling levels for the period July 1, 1999 through June 30, 2000.

FOR FURTHER INFORMATION CONTACT: David Ulevich, Office of Pipeline Regulation, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 208–0678.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in the Public Reference Room at 888 First Street, NE., Room 2A, Washington, DC 20426.

The Commission Issuance Posting System (CIPS) provides access to the texts of formal documents issued by the Commission from November 14, 1994 to the present. CIPS can be accessed via Internet through FERC's Home Page (http://www.ferc.fed.us) using the CIPS Link or the Energy Information Online icon. Documents will be available on CIPS in ASCII and WordPerfect 6.1 format. User assistance is available at 202–208–2474 or by E–mail to cips.master@ferc.fed.us.

This document is also available through the Commission's Records and Information Management System (RIMS), an electronic storage and retrieval system of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed. RIMS is available in the Public Reference Room or remotely via Internet through FERC's Home Page using the RIMS link or the energy Information Online icon. User assistance is available at 202–208–2222, or by E-mail to rimsmaster@ferc.fed.us.

Finally, the complete text on diskette in WordPerfect format may be purchased from the Commission's copy contractor, RVJ International, Inc. RVJ International, Inc. is located in the Public Reference Room at 888 First Street, NE., Washington, DC 20426.

The Commission's regulations include a methodology for oil pipelines to change their rates through use of an index system that establishes ceiling levels for such rates. The index system as set forth at 18 CFR 342.3 is based on the annual change in the Producer Price Index for Finished Goods (PPI–FG), minus one percent. The regulations provide that each year the Commission will publish an index reflecting the final change in the PPI–FG, minus one percent, after the final PPI–FG is made available by the Bureau of Labor Statistics in May of each calendar year.

The annual average PPI–FG index figure for 1997 was 131.8 and the annual average PPI–FG index figure for 1998 was 130.7.[1] Thus, the percent change (expressed as a decimal) in the annual average PPI–FG from 1997 to 1998, minus one percent, is a negative 0.018346.[2] Oil pipelines must multiply their July 1, 1998–June 30, 1999 rate ceiling levels by 0.981654[3] to compute their rate ceiling levels for the period July 1, 1999, through June 30, 2000, in accordance with 18 CFR 342.3(d).

To obtain July 1, 1999–June 30, 2000 ceiling levels, pipelines must first calculate their ceiling levels for the January 1, 1995–June 30, 1995 index period, by multiplying their December 31, 1994 rates by 1.002175. Pipelines must then multiply those ceiling levels by 0.996415 to obtain the July 1, 1995–June 30, 1996 ceiling levels. Then, pipelines must multiply their July 1, 1995–June 30, 1996 ceiling levels by 1.009124 to obtain the July 1, 1996–June 30, 1997 ceiling levels, and multiply the July 1, 1996–June 30, 1997 ceiling levels by 1.016583 to obtain the July 1, 1997–June 30, 1998 ceiling levels. Pipelines then must multiply the July 1, 1997–June 30, 1998 ceiling levels by 0.993808 to obtain the July 1, 1998–June 30, 1999

[1] The final figure for the annual average PPI–FG is published by the Bureau of Labor Statistics in mid-May of each year. This figure is publicly available from the Division of Industrial Prices and Price Indexes of the Bureau of Labor Statistics, at (202) 606–7705, and is available in print in August in Table 1 of the annual data supplement to the BLS publication *Producer Price Index*. The PPI data are also available via the Internet. The Internet address is <http://www.fedstats.gov. This site contains data from a number of government agencies; to obtain the BLS data, click on agencies, then click on Bureau of Labor Statistics, then click on data, Most Requested Series, scroll to Producer Price Indexes-Commodities (Finished Goods), for the latest available data.

[2] [130.7 − 131.8]/131.8 = − 0.008346 − .01 = − 0.018346.

[3] 1 + (− 0.018346) = 0.981654.

ceiling levels. finally, pipelines must multiply the July 1, 1998–June 30, 1999 ceiling levels by 0.981654 to obtain the July 1, 1999–June 30, 2000 ceiling levels. *See Explorer Pipelines Company*, 71 FERC 61,416 at n.6 (1995) for an explanation of how ceiling levels must be calculated.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–13121 Filed 5–25–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Western Area Power Administration

[Rate Order No. WAPA–84]

Desert Southwest Customer Service Region Network Integration Transmission and Ancillary Services

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice; correction.

SUMMARY: The Western Area Power Administration published a document in the **Federal Register** of May 11, 1998, Desert Southwest Customer Service Region Network Integration Transmission and Ancillary Services. The document omitted Rate Schedule DSW-SUR1, Schedule 6 to Tariff.

FOR FURTHER INFORMATION CONTACT: Mr. Maher A. Nasir, Rates Team Lead, telephone (602) 352–2768, or Mr. Tyler Carlson, Regional Manager, telephone (602) 352–2453, Desert Southwest Customer Service Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005–6457.

Correction

In the **Federal Register** issue of May 11, 1999, in FR Doc. 99–11864, on page 25334, in the first column, insert the following schedule:

Rate Schedule DSW–SUR1; SCHEDULE 6 to Tariff—OPERATING RESERVE—SUPPLEMENTAL RESERVE SERVICE.

Effective

The first day of the first full billing period beginning on or after April 1, 1999, through March 31, 2004.

Applicable

Supplemental reserve service (Reserves) is needed to serve load immediately in the event of a system contingency. Reserves may be provided by generating units that are on-line and loaded at less than maximum output. The transmission customer must either purchase this service from the Western Area Lower Colorado control area (WALC), or make alternative comparable arrangements to satisfy its Reserves requirements. The charges for Reserves are referred to below. The amount of Reserves will be set forth in the service agreement.

Formula Rate

No long-term Reserves are available from WALC resources. The Desert Southwest Customer Service Region, upon request, will obtain the Reserves on the open market for the customer and pass through the cost, plus a 10 percent administrative charge.

Rate

Cost for Reserves = market price + 10 percent.

Dated: May 18, 1999.

Timothy J. Meeks,

Assistant Administrator.

[FR Doc. 99–13397 Filed 5–25–99; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6349–7]

Futures Forum Discussion of Small Drinking Water Systems and Unserved Populations; Notice of Meeting

AGENCY: Environmental Protection Agency.

ACTION: Notice of meeting.

SUMMARY: The U.S. Environmental Protection Agency (EPA) will be holding a one-day public meeting from 9:00—5:00 on June 10, 1999 in Washington, DC. The purpose of this meeting is to discuss the small systems and unserved populations questions related to the drinking water futures forum.

The purpose of the Drinking Water Futures Forum is to evaluate the challenges facing the nation in ensuring a safe supply of drinking water in 25 years, and develop a plan to meet these challenges. The question to be discussed is: How should we ensure safe drinking water in 25 years? To help discusion, this all-encompassing question will be broken into 7 sub-questions: treatment technologies, source water quality and quantity, sensitive subpopulations, cost, small systems, unserved populations, and research.

The specific questions to be discussed on June 10 are small systems and unserved populations. Issues related to small systems include: what should the structure of the drinking water provision system be in the future? Can consolidation and restructuring take more advantage of economies of scale? Are there additional activities to help alleviate tribal and small system compliance problems? What can/will be the drivers affecting the structure of the industry? Are there innovative or alternative institutional structures for the provision of drinking water to small populations?

Issues related to unserved populations include: What are our responsibilities to help provide safe drinking water to those not served by public water systems? How could we meet such responsibilities (e.g., education?)

ADDRESSES: The meeting will be held at the Department of the Interior, 1849 C St. NW, Washington DC 20240, in Conference Room 7000B.

FOR FURTHER INFORMATION CONTACT: To register for the meeting, please contact the Safe Drinking Water Hotline at 1–800–426–4791 or 703–285–1093 between 9:00 a.m. and 5:30 p.m. EDT. For specific meeting information on the small systems question, please contact Peter Shanaghan at 202–260–5813 or by e-mail at *shanaghan.peter@epa.gov*. For specific information on the unserved populations question, please contact Joshua Joseph at 202–260–2446, or by e-mail at *joseph.joshua@epa.gov*.

Cynthia C. Dougherty,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 99–13383 Filed 5–25–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34186; FRL–6083–4]

Increasing Transparency for the Tolerance Reassessment Process; Availability of Preliminary Risk Assessment for the Organophosphate Pesticide: Phostebupirim

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of documents that were developed as part of the Environmental Protection Agency's process for making reregistration eligibility decisions for the organophosphate pesticides and for tolerance reassessments consistent with the Federal Food, Drug, and Cosmetic Act (FFDCA) as amended by the Food Quality Protection Act of 1996 (FQPA). These documents are the preliminary human health risk assessment and related documents for phostebupirim. This notice also starts a 60-day public comment period for the preliminary risk assessment. Comments are to be limited

to issues directly associated with this organophosphate pesticide. By allowing access and opportunity for comment on the preliminary risk assessment, EPA is seeking to strengthen stakeholder involvement and help ensure our decisions under FQPA are transparent and based on the best available information. The tolerance reassessment process will ensure that the United States continues to have the safest and most abundant food supply. The Agency cautions that this risk assessment is a preliminary assessment only and that further refinements of the risk assessment may be appropriate for the phostebupirim organophosphate pesticide. This document reflects the analysis conducted as of the time it was produced and it is appropriate that, as new information becomes available and/or additional analyses are performed, the conclusions in it may change.

DATES: Comments, identified by docket control number OPP–34186, must be received by EPA on or before July 26, 1999.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the ''SUPPLEMENTARY INFORMATION'' section. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–34186 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Karen Angulo, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 308–8004; e-mail address: angulo.karen@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply To Me?

This action applies to the public in general. As such, the Agency has not attempted to specifically describe all the entities potentially affect by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the ''FOR FURTHER INFORMATION CONTACT'' section.

B. How Can I Get Additional Information, Including Copies of This Document or Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document and certain other available documents from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

To access information about the risk assessment for phostebupirim organophosphate pesticide, go directly to the Home Page for the Office of Pesticide Programs at http:www.epa.gov/pesticides/op.

2. *In person*. The Agency has established an official record for this action under the docket control number OPP–34186. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Public Information and Records Integrity Branch telephone number is (703) 305–5805.

C. How and To Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–34186 in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA., between 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Public Information and Records Integrity Branch telephone number is (703) 305–5805.

3. *Electronically*. You may submit your comments electronically by e-mail to:'' opp-docket@epa.gov'' or mail or deliver your standard computer disk to the appropriate address in this unit. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file, avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard computer disks in WordPerfect 5.1/6.1 or ASCII file format. All comments in electronic form must be identified by the docket control number OPP–34186. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI Information That I Want To Submit To the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the ''FOR FURTHER INFORMATION CONTACT'' section.

II. What Action Is EPA Taking?

EPA is making available preliminary risk assessments that have been developed as part of EPA's process for making reregistration eligibility decisions for the organophosphate pesticides and for tolerance reassessments consistent with the FFDCA as amended by the FQPA. The Agency's preliminary human health effects risk assessment for this organophosphate pesticide is available in the OPP docket.

As additional comments, reviews, and risk assessment modifications become available, these will also be docketed for the one organophosphate pesticide listed in this notice. The Agency cautions that this risk assessment is a preliminary assessment only and that

further refinements of the risk assessment may be appropriate for the phostebupirim organophosphate pesticide. This document reflects only the work and analysis conducted as of the time it was produced and it is appropriate that, as new information becomes available and/or additional analyses are performed, the conclusions in it may change.

As the preliminary risk assessments for the remaining organophosphate pesticides are completed and registrants are given a 30-day review period to identify possible computational or other clear errors in the risk assessment, these risk assessments and registrant responses will be placed in the individual organophosphate pesticide dockets. A notice of availability for subsequent assessments will appear in the **Federal Register**.

The Agency is providing an opportunity, through this notice, for interested parties to provide written comments and input to the Agency on the preliminary risk assessment for the chemical specified in this notice. Such comments and input could address, for example, the availability of additional data to further refine the risk assessment, such as percent crop treated information or submission of residue data from food processing studies, or could address the Agency's risk assessment methodologies and assumptions as applied to this specific chemical. Comments should be limited to issues raised within the preliminary risk assessment and associated documents. EPA will provide other opportunities for public comment on other science issues associated with the organophosphate tolerance reassessment program. Failure to comment on any such issues as part of this opportunity will in no way prejudice or limit a commenter's opportunity to participate fully in later notice and comment processes. All comments should be submitted by July 26, 1999, at the address given under ''ADDRESSES.'' Comments will become part of the Agency record for each individual organophosphate pesticide to which they pertain.

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: May 20, 1999.

Jacqueline McQueen,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 99–13377 Filed 5–25–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–64041; FRL–6082–9]

Notice of Cancellation of All Registrations of the Organophosphate Isofenphos

AGENCY: Environmental Protection Agency (EPA).
ACTION: Final Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of its response to requests for voluntary cancellation of registrations for all products containing isofenphos by Bayer Corporation, the sole U.S. registrant of the insecticide.

DATES: These terminations and cancellations become effective according to the timetable specified under ''Background'' subject to the existing stocks provision specified herein.

FOR FURTHER INFORMATION CONTACT: By mail: Philip Poli, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number and e-mail: Reregistration Branch 3, Crystal Mall #2, 6th floor, 1921 Jefferson Davis Highway, Arlington, VA; (703) 308–8038; e-mail: poli.philip@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may, at any time, request that any of its pesticide registrations be canceled or amended. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the EPA Administrator may approve or deny the request consistent with the provisions established pursuant to section 6(f)(1).

Accordingly, the Agency is proceeding with the cancellation of all isofenphos products as specified in the January 15, 1999 **Federal Register**. That notice announced receipt of these requests for termination/cancellation and provided for disposition of existing stocks.

II. Background

Isofenphos is the common name for an insecticide of the organophosphate class; its trade name is Oftanol. The chemical name for isofenphos is 1-methylethyl 2-[[ethoxy[(1-methylethyl)amino] phosphinothioyl]oxy]benzoate. Bayer Corporation is the sole technical manufacturer of isofenphos and manufactures the technical material overseas. Isofenphos was registered in the United States for use on turf and ornamentals for control of white grubs and molecrickets, although only the turf use products were being sold at the time of the request for voluntary cancellation.

In the **Federal Register** of January 15, 1999 (64 FR 2642) (FRL 6056–5), EPA issued a notice announcing receipt of the isofenphos registrants' request to terminate uses and cancel registrations under section 3 of FIFRA, and provided notice of EPA's intent to accept those requests. According to the timetable specified in the January 15, 1999 **Federal Register** notice, cancellation of Bayer Corporation's isofenphos registrations will be accomplished in three steps. First, the following product registrations are canceled effective May 26, 1999.

- Oftanol 5% Granular Turf and Ornamental Insecticide, EPA Reg. No. 3125–435
- Oftanol 5% Granular Insecticide, EPA Reg. No. 3125–330
- Oftanol 1.5% Granular Insecticide, EPA Reg. No. 3125–331
- Lawn Food and Insecticide, EPA Reg. No. 3125–350

EPA will continue to permit the sale, distribution and use of existing stocks of these product registrations already in the hands of dealers or users.

Second, Bayer's product Oftanol 2 Insecticide (EPA Reg. No. 3125–342) will be canceled on September 30, 1999. The Agency has authorized a 1–year existing stocks provision, whereby Bayer Corporation may sell and/or distribute all remaining inventory of this product, under the previously approved labeling, until September 30, 2000. Third, the cancellation of Oftanol technical will become effective on December 31, 1999. Bayer Corporation will discontinue any further sales and/or distribution of Oftanol technical as of this date.

Further, because sales of isofenphos have been steadily declining since 1994, Bayer has agreed to limit the sale of Oftanol technical in 1999 to the level of 1998 sales. Finally, Bayer also stated in its December 11, 1998 letter to the Agency requesting voluntary cancellation, that they will notify formulator customers of the schedule for discontinuance of their isofenphos product registration ''to give them adequate transition time to develop or identify alternative products.''

III. Cancellation Order and Existing Stocks Provision

The Agency hereby grants all of the requested cancellations, consistent with the schedule Bayer Corporation requested in its December 11, 1999 voluntary cancellation letter to the Agency. Bayer Corporation requested in its December 11, 1999 letter a l–year existing stocks provision for its end-use product Oftanol 2 Insecticide (EPA Reg. No. 3125–342). The Agency has determined that the effective date of cancellation for this product will be September 30, 1999. The Bayer Corporation, and any supplemental distributors, may sell or distribute existing stocks of this product, bearing the previously-approved labeling, until September 30, 2000. In addition, EPA will continue to permit, after September 30, 2000 (EPA Reg. No. 3125–342) and December 31, 1999 (EPA Reg. No. 3125–326), the sale, distribution, and use of existing stocks of product containing isofenphos already in the channels of distribution by persons other than the registrant and/or supplemental registrants, (i.e., stocks already in the hands of dealers and users).

Cancellation of the following isofenphos product registrations will become effective on May 26, 1999. EPA will continue to permit the sale, distribution and use of existing stocks of the following product registrations already in the hands of any person other than the registrant and/or supplemental distributors:

- Oftanol 5% Granular Turf and Ornamental Insecticide, EPA Reg. No. 3125–435
- Oftanol 5% Granular Insecticide, EPA Reg. No. 3125–330
- Oftanol 1.5% Granular Insecticide, EPA Reg. No. 3125–331
- Lawn Food and Insecticide, EPA Reg. No. 3125–350

All sale or distribution of existing stocks permitted by this cancellation order is permitted only to the extent that the product being sold or distributed bears the previously-approved label that was required to be on the product on the date of cancellation. All use of existing stocks of any product canceled pursuant to this cancellation order must be consistent with the previously-approved labeling on or accompanying the product. In addition, dealers and users should be aware that the Agency reserves the right to amend the existing stocks portion of this order if conditions warrant that existing stocks are not exhausted in a reasonable time.

Lists of Subjects:

Environmental protection, Agricultural commodities, Pesticides and pests, Product registrations

Dated: May 18, 1999.

Lois A. Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 99–13376 Filed 5–25–99; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–30479; FRL–6080–7]

E. I. DuPont De Nemours and Co.; Applications to Register Pesticide Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing new active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments must be submitted by June 25, 1999.

ADDRESSES: By mail, submit written comments identified by the document control number [OPP–30479] and the file symbols to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Environmental Protection Agency, Rm. 119, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Comments and data may also be submitted electronically to: opp-docket@epamail.epa.gov. Follow the instructions under ''SUPPLEMENTARY INFORMATION.'' No Confidential Business Information (CBI) should be submitted through e-mail.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. The public docket is available for public inspection in Rm. 119 at the Virginia address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: By mail: James Tompkins, Product Manager (PM-25), Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 239, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703 305–5697, e-mail: tompkins.jim@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

I. Products Containing Active Ingredients Not Included In Any Previously Registered Products

1. File Symbol: 352–LII. Applicant: E. I. duPont de Nemours and Company, Agricultural Products, P.O. Box 18038, Wilmington, DE 19880–0038. Product Name: Milestone. Herbicide. Active ingredient: 2-[2,4-Dichloro-5-(2-propynyloxy)phenyl]-5,6,7,8-tetrahydro-1,2,4-triazolo[4,3-*a*]-pyridin-3(2*H*)-one at 80%. Proposed classification/Use: General. For control of of many annual broadleaf weeds and grasses in citrus, grapes, sugarcane, temperate woody crops, hybrid poplar plantations, noncrop industrial sites, and turf.

2. File Symbol: 352–LIT. Applicant: E. I. duPont de Nemours and Company. Product Name: DPX-R6447 Technical. Herbicide. Active ingredient: 2-[2,4-Dichloro-5-(2-propynyloxy)phenyl]-5,6,7,8-tetrahydro-1,2,4-triazolo[4,3-*a*]-pyridin-3(2*H*)-one at 97.32%. Proposed classification/Use: General. For the formulation of herbicides only.

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register**. The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

II. Public Record and Electronic Submissions

The official record for this notice, as well as the public version, has been established for this notice under docket number [OPP–30479] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official notice record is located at the address in ''ADDRESSES'' at the beginning of this document.

Electronic comments can be sent directly to EPA at:
opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP–30479]. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pest, Product registration.

Dated: May 13, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 99–13036 Filed 5–25–99; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–66267; FRL 6078–9]

Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by registrants to voluntarily cancel certain pesticide registrations.

DATES: Unless a request is withdrawn by November 22, 1999, orders will be issued cancelling all of these registrations.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Office location for commercial courier delivery, telephone number and e-mail address: Rm. 224, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5761; e-mail: hollins.james@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, provides that a pesticide registrant may, at any time, request that any of its pesticide registrations be cancelled. The Act further provides that EPA must publish a notice of receipt of any such request in the **Federal Register** before acting on the request.

II. Intent to Cancel

This Notice announces receipt by the Agency of requests to cancel some 158 pesticide products registered under section 3 or 24(c) of FIFRA. These registrations are listed in sequence by registration number (or company number and 24(c) number) in the following Table 1.

TABLE 1—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product Name	Chemical Name
000099—00123	Watkins Insect Repellant - Formula 50	Dipropyl isocinchomeronate
		N-Octyl bicycloheptene dicarboximide
		N,N-Diethyl-meta-toluamide and other isomers
000100 MS—88—0007	Triumph 4E Insecticide	*O,O*-Dimethyl *O*-(1-isopropyl-5-chloro-1,2,4-triazol-3-yl) phosphorothioate
000100 NC—88—0007	Triumph 4E Insecticide	*O,O*-Dimethyl *O*-(1-isopropyl-5-chloro-1,2,4-triazol-3-yl) phosphorothioate
000100 OR—95—0019	Triumph 4E Insecticide	*O,O*-Diethyl *O*-(5-chloro-1-(1-methylethyl)-1*H*-1,2,4-triazol-3-yl) phosphorothioate
000100 OR—95—0024	Dual Herbicide	2-Chloro-*N*-(2-ethyl-6-methylphenyl)-*N*-(2-methoxy-1-methylphenyl)acetamide (9CI)
000100 OR—95—0025	Dual 8E Herbicide	2-Chloro-*N*-(2-ethyl-6-methylphenyl)-*N*-(2-methoxy-1-methylphenyl)acetamide (9CI)
000100 SC—88—0005	Triumph 4E Insecticide	*O,O*-Dimethyl *O*-(1-isopropyl-5-chloro-1,2,4-triazol-3-yl) phosphorothioate
000121—00015	Cutter Evergreen Scent Insect Repellent Spray	Dipropyl isocinchomeronate
		N-Octyl bicycloheptene dicarboximide
		N,N-Diethyl-meta-toluamide and other isomers
000121—00016	Cutter Evergreen Scent Insect Repellent Cream	Dipropyl isocinchomeronate
		N-Octyl bicycloheptene dicarboximide
		N,N-Diethyl-meta-toluamide and other isomers
000121—00018	Cutter Insect Repellent Stick	*N,N*-Diethyl-meta-toluamide and other isomers

TABLE 1—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product Name	Chemical Name
000121—00020	Cutter Evergreen Scent Insect Repellent Stick	*N,N*-Diethyl-meta-toluamide and other isomers
000121—00021	Cutter Insect Repellent Spray	Dipropyl isocinchomeronate
		N-Octyl bicycloheptene dicarboximide
		N,N-Diethyl-meta-toluamide and other isomers
000121—00022	Cutter Insect Repellent	Dipropyl isocinchomeronate
		N-Octyl bicycloheptene dicarboximide
		N,N-Diethyl-meta-toluamide and other isomers
000121—00027	Cutter Evergreen Scent Insect Repellent Pump Spray	Dipropyl isocinchomeronate
		N-Octyl bicycloheptene dicarboximide
		N,N-Diethyl-meta-toluamide and other isomers
000121—00029	Cutter Evergreen Scent Insect Repellent Pump Spray Form	*N,N*-Diethyl-meta-toluamide and other isomers
000121—00030	Cutter Insect Repellent Cream Formula MM	*N,N*-Diethyl-meta-toluamide and other isomers
000121—00031	Cutter Evergreen Scent Insect Repellent Spray Formula M	*N,N*-Diethyl-meta-toluamide and other isomers
000121—00032	Cutter Evergreen Scent Insect Repellent Cream Formula M	*N,N*-Diethyl-meta-toluamide and other isomers
000121—00033	Cutter Original Insect Repellent Spray Formula MMI	*N,N*-Diethyl-meta-toluamide and other isomers
000121—00041	Cutter Original Insect Repellent Pump Spray	Dipropyl isocinchomeronate
		N-Octyl bicycloheptene dicarboximide
		N,N-Diethyl-meta-toluamide and other isomers
000121—00045	Cutter Insect Repellent - Tick Repellent - Formula MMII	*N,N*-Diethyl-meta-toluamide and other isomers
000121—00046	Evergreen Cutter Insect Repellent - Formula MMII	*N,N*-Diethyl-meta-toluamide and other isomers
000121—00050	Cutter Insect Repellent #10	*N,N*-Diethyl-meta-toluamide and other isomers
000121—00051	Evergreen Cutter Insect Repellent #10E	*N,N*-Diethyl-meta-toluamide and other isomers
000121—00052	Cutter Insect Repellent #10G	*N,N*-Diethyl-meta-toluamide and other isomers
000121—00054	Cutter Insect Repellent #10/10/40PS	*N,N*-Diethyl-meta-toluamide and other isomers
000121—00055	Cutter Insect Repellent #10/10/40PSE	*N,N*-Diethyl-meta-toluamide and other isomers
000121—00058	Cutter Insect Repellent #30CRE	*N,N*-Diethyl-meta-toluamide and other isomers
000121—00060	Cutter Insect Repellent #CN003	*N,N*-Diethyl-meta-toluamide and other isomers
000121—00061	Cutter Insect Repellent #CN0004	*N,N*-Diethyl-meta-toluamide and other isomers
000121—00062	Evergreen Scent Cutter Insect Repellent #CS326	*N,N*-Diethyl-meta-toluamide and other isomers
000121—00063	Unscented Cutter Insect Repellent #CS301	*N,N*-Diethyl-meta-toluamide and other isomers
000121—00067	Cutter Insect Repellent #CTRO12	*N,N*-Diethyl-meta-toluamide and other isomers
000121—00069	Cutter Insect Repellent #CA23e	*N,N*-Diethyl-meta-toluamide and other isomers
000121—00070	Cutter Insect Repellent #CC129	*N,N*-Diethyl-meta-toluamide and other isomers
000121—00073	Cutter Insect Repellent #10GE–A	*N,N*-Diethyl-meta-toluamide and other isomers
000121—00082	0utter Insect Repellent 30P	*N,N*-Diethyl-meta-toluamide and other isomers
000121—00083	Cutter Insect Repellent 30T	*N,N*-Diethyl-meta-toluamide and other isomers
000241—00311	Ala-Scept Herbicide	Alachlor (2-Chloro-*N*-(2,6-diethylphenyl)-*N*-(methoxymethyl)acetamide)
		2-(4,5-Dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1*H*-imidazol-2-yl)-3-
000241—00329	Ala-Scept ESC Herbicide	Alachlor (2-Chloro-*N*-(2,6-diethylphenyl)-*N*-(methoxymethyl)acetamide)
		2-(4,5-Dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1*H*-imidazol-2-yl)-3-
000264—00483	Rovral 30 Flowable Fungicide	3-(3,5-Dichlorophenyl)-*N*-(1-methylethyl)-2,4-dioxo-1-imidazolidinecarboxamide
000264—00562	Iprodione HG Fungicide	3-(3,5-Dichlorophenyl)-*N*-(1-methylethyl)-2,4-dioxo-1-imidazolidinecarboxamide

TABLE 1—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product Name	Chemical Name
000264—00563	Iprodione Lawn and Ornamentals Fungicide	3-(3,5-Dichlorophenyl)-*N*-(1-methylethyl)-2,4-dioxo-1-imidazolidinecarboxamide
000264 ID—96—0011	Diva Fungicide	Tetrachloroisophthalonitrile
		3-(3,5-Dichlorophenyl)-*N*-(1-methylethyl)-2,4-dioxo-1-imidazolidinecarboxamide
000264 MN—96—0004	Diva Fungicide	Tetrachloroisophthalonitrile
		3-(3,5-Dichlorophenyl)-*N*-(1-methylethyl)-2,4-dioxo-1-imidazolidinecarboxamide
000264 MO—96—0002	Diva Fungicide	Tetrachloroisophthalonitrile
		3-(3,5-Dichlorophenyl)-*N*-(1-methylethyl)-2,4-dioxo-1-imidazolidinecarboxamide
000264 OR—96—0033	Diva Fungicide	Tetrachloroisophthalonitrile
		3-(3,5-Dichlorophenyl)-*N*-(1-methylethyl)-2,4-dioxo-1-imidazolidinecarboxamide
000279 MS—98—0009	Pounce 3.2 EC Insecticide	Cyclopropanecarboxylic acid, 3-(2,2-dichloroethenyl)-2,2-dimethyl-,
000279 OR—89—0002	Talstar 10WP Insecticide/miticide	(2-Methyl(1,1'-biphenyl□-3-yl)methyl 3-(2-chloro-3,3,3-trifluoro-1-)
000334—00561	Adios II Insect Repellent	Dipropyl isocinchomeronate
		N-Octyl bicycloheptene dicarboximide
		N,N-Diethyl-meta-toluamide and other isomers
000400 OR—79—0026	Ded-Weed Sulv-Amine	Dimethylamine 2,4-dichlorophenoxyacetate
000407—00317	Garden Weeder contains Dacthal	Dimethyl tetrachloroterephthalate
000407—00338	Imperial Garden Weed Preventer	Dimethyl tetrachloroterephthalate
000407—00416	Imperial 5% Dacthal	Dimethyl tetrachloroterephthalate
000478—00040	Real Kill Insect Repellent Spray	*N,N*-Diethyl-meta-toluamide and other isomers
000524—00328	Ramrod and Atrazine Flowable Herbicide	2-Chloro-*N*-isopropylacetanilide
		2-Chloro-4-(ethylamino)-6-(isopropylamino)-*s*-triazine
000524—00423	Ramrod + Atrazine DF Herbicide	2-Chloro-*N*-isopropylacetanilide
		2-Chloro-4-(ethylamino)-6-(isopropylamino)-*s*-triazine
000538—00182	Fertilizer Plus Lawn Disease Preventer	3-(3,5-Dichlorophenyl)-*N*-(1-methylethyl)-2,4-dioxo-1-imidazolidinecarboxamide
000538—00217	Lawn Disease Control Plus Fertilizer	Dimethyl ((1,2-phenylene)bis(iminocarbonothioyl))bis(carbamate)
		3-(3,5-Dichlorophenyl)-*N*-(1-methylethyl)-2,4-dioxo-1-imidazolidinecarboxamide
000655—00579	Prentox Lindane 20% Emulsifiable Concentrate	Lindane (Gamma isomer of benzene hexachloride)(99% pure gamma isomer
000655—00580	Prentox Lindane 25 W	Lindane (Gamma isomer of benzene hexachloride)(99% pure gamma isomer
000655—00768	Prentox 20 Lindane Emulsifiable Concentrate	Lindane (Gamma isomer of benzene hexachloride) (99% pure gamma isomer
000707—00167	Kathon CS–30 Oil Field Microbiocide	5-Chloro-2-methyl-3(2*H*)-isothiazolone
		2-Methyl-3(2*H*)-isothiazolone
000707—00168	Kathon CS–35	5-Chloro-2-methyl-3(2*H*)-isothiazolone
		2-Methyl-3(2*H*)-isothiazolone
000707—00169	Kathon CS–25 Oilfield Microbiocide	5-Chloro-2-methyl-3(2*H*)-isothiazolone
		2-Methyl-3(2*H*)-isothiazolone
000707—00171	Kathon MWX	5-Chloro-2-methyl-3(2*H*)-isothiazolone
		2-Methyl-3(2*H*)-isothiazolone
000707—00205	Kelthane 35 Agricultural Miticide	1,1-Bis(chlorophenyl)-2,2,2-trichloroethanol
000707 AZ—88—0010	Kelthane 35 Agricultural Miticide	1,1-Bis(chlorophenyl)-2,2,2-trichloroethanol
000707 CA—77—0053	Kelthane Mf	1,1-Bis(chlorophenyl)-2,2,2-trichloroethanol
000707 CA—92—0026	Kelthane 35 Agricultural Miticide	1,1-Bis(chlorophenyl)-2,2,2-trichloroethanol
000707 CA—97—0006	Kelthane 35 Agricultural Miticide	1,1-Bis(chlorophenyl)-2,2,2-trichloroethanol
000707 GA—88—0006	Kelthane Mf Agricultural Miticide	1,1-Bis(chlorophenyl)-2,2,2-trichloroethanol

TABLE 1—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product Name	Chemical Name
000707 LA—88—0007	Kelthane Mf Agricultural Miticide	1,1-Bis(chlorophenyl)-2,2,2-trichloroethanol
000707 ME—91—0008	Kelthane 35 Agricultural Miticide	1,1-Bis(chlorophenyl)-2,2,2-trichloroethanol
000707 MS—90—0004	Kelthane MF Agricultural Miticide	1,1-Bis(chlorophenyl)-2,2,2-trichloroethanol
000707 OR—90—0015	Kelthane 35 Agricultural Miticide	1,1-Bis(chlorophenyl)-2,2,2-trichloroethanol
000707 PA—92—0004	Kelthane 35 Agricultural Miticide	1,1-Bis(chlorophenyl)-2,2,2-trichloroethanol
000707 TX—93—0018	Kelthane MF Agricultural Miticide	1,1-Bis(chlorophenyl)-2,2,2-trichloroethanol
000707 VA—89—0005	Kelthane 35 Agricultural Miticide	1,1-Bis(chlorophenyl)-2,2,2-trichloroethanol
000707 WA—90—0022	Kelthane 35 Agricultural Miticide	1,1-Bis(chlorophenyl)-2,2,2-trichloroethanol
000769—00639	Smcp Granular Hy-Kil-4 Non Selective Weed & Grass Killer	5-Bromo-3-sec-butyl-6-methyluracil
000829—00165	SA-50 Brand Home Garden Weed Granules containing Dactha	Dimethyl tetrachloroterephthalate
001021—00535	Personal Repellent Formula 5731	Dipropyl isocinchomeronate
		N-Octyl bicycloheptene dicarboximide
		N,N-Diethyl-meta-toluamide and other isomers
001685—00072	State Formula 254 IRS Insect Repellent Spray	Dipropyl isocinchomeronate
		N-Octyl bicycloheptene dicarboximide
		N,N-Diethyl-meta-toluamide and other isomers
002217—00779	Bug Stop Lotion	*N,N*-Diethyl-meta-toluamide and other isomers
002217—00780	Bug Stop Pump Spray	Dipropyl isocinchomeronate
		N-Octyl bicycloheptene dicarboximide
		N,N-Diethyl-meta-toluamide and other isomers
002596—00120	Hartz Flea and Tick Repellent for Cats III	*N,N*-Diethyl-meta-toluamide and other isomers
		(*S*-(*R*,R**))-4-Chloro-alpha-(1-methylethyl)benzeneacetic acid,
002596—00121	Hartz Flea and Tick Repellent for Dogs III	*N,N*-Diethyl-meta-toluamide and other isomers
		(*S*-(*R*,R**))-4-Chloro-alpha-(1-methylethyl)benzeneacetic acid,
002792—00064	Deco Salt No. 35	2,6-Dichloro-4-nitroaniline
		3-(3,5-Dichlorophenyl)-*N*-(1-methylethyl)-2,4-dioxo-1-imidazolidinecarboxamide
003487—00018	Eagles–7 Mange Treatment	Lindane (Gamma isomer of benzene hexachloride) (99% pure gamma isomer
		Rotenone
004822—00007	Off! Liquid Insect Repellent	*N,N*-Diethyl-meta-toluamide and other isomers
004822—00010	Off! Pressurized Insect Repellent	*N,N*-Diethyl-meta-toluamide and other isomers
004822—00160	Off! Formula III Liquid Spray Insect Repellent	*N,N*-Diethyl-meta-toluamide and other isomers
004822—00174	Off! Insect Repellent Formula VI	*N,N*-Diethyl-meta-toluamide and other isomers
004822—00197	6017 Formula 3 Insect Repellent	*N,N*-Diethyl-meta-toluamide and other isomers
004822—00204	Johnson Wax 6017 F0rmula 7 Insect Repellent	*N,N*-Diethyl-meta-toluamide and other isomers
004822—00206	Formula 6099 #2 Insect Repellant	*N,N*-Diethyl-meta-toluamide and other isomers
004822—00215	Maximum Strength Deep Woods Off!	*N,N*-Diethyl-meta-toluamide and other isomers
004822—00216	Maximum Strength Deep Woods Off! II	*N,N*-Diethyl-meta-toluamide and other isomers
004822—00217	Johnson Wax Deep Woods Off! III	*N,N*-Diethyl-meta-toluamide and other isomers
004822—00239	6017 Formula 13 Insect Repellent	*N,N*-Diethyl-meta-toluamide and other isomers
004822—00240	6017 Formula 14 Insect Repellent	*N,N*-Diethyl-meta-toluamide and other isomers
004822—00241	6017 Formula 15 Insect Repellent	*N,N*-Diethyl-meta-toluamide and other isomers
004822—00242	Formula 6099 #8 Insect Repellent	*N,N*-Diethyl-meta-toluamide and other isomers
004822—00243	Formula 6099 #9 Insect Repellent	*N,N*-Diethyl-meta-toluamide and other isomers
004822—00244	Formula 6099 #10 Insect Repellent	*N,N*-Diethyl-meta-toluamide and other isomers
004822—00253	Formula 6099 #12 Insect Repellent	*N,N*-Diethyl-meta-toluamide and other isomers

TABLE 1—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product Name	Chemical Name
004822—00276	Maximum Strength Pump Spray Deep Woods Off!	*N,N*-Diethyl-meta-toluamide and other isomers
004822—00366	Off! Insect Repellent Formula 1990 #1	*N,N*-Diethyl-meta-toluamide and other isomers
004822—00398	Unscented Deep Woods Off! for Sportsmen Insect Repellent	*N,N*-Diethyl-meta-toluamide and other isomers
004822—00401	Deep Woods Off Formula V111	*N,N*-Diethyl-meta-toluamide and other isomers
004822—00416	Insect Repellent 1994 DJDL	*N,N*-Diethyl-meta-toluamide and other isomers
004822—00424	Off! Lotion Formula By	*N,N*-Diethyl-meta-toluamide and other isomers
005481—00236	Lindane 12 1/2% Concentrate	Lindane (Gamma isomer of benzene hexachloride) (99% pure gamma isomer
005481—00237	Lindane 12 1/2% Insecticide	Lindane (Gamma isomer of benzene hexachloride) (99% pure gamma isomer
005481—00251	Lindane 1–E	Lindane (Gamma isomer of benzene hexachloride) (99% pure gamma isomer
005481—00310	20% Lindane E.C.	Lindane (Gamma isomer of benzene hexachloride) (99% pure gamma isomer
005481—00319	Royal Brand Lindane 25–W	Lindane (Gamma isomer of benzene hexachloride) (99% pure gamma isomer
005905—00487	Agco Methomyl 2 Insecticide Dust	*S*-Methyl *N*-((methylcarbamoyl)oxy)thioacetimidate
006718—00006	D–15 Insect Repellent	*N,N*-Diethyl-meta-toluamide and other isomers
009444—00092	Baygon Crack & Crevice Insecticide	*o*-Isopropoxyphenyl methylcarbamate
010107—00004	All In 1 Turf 16=4=6	Dimethyl tetrachloroterephthalate
010107—00082	Cornbelt Dacthal 5–G	Dimethyl tetrachloroterephthalate
010707—00013	Magnacide 4551	5-Chloro-2-methyl-3(2*H*)-isothiazolone
		2-Methyl-3(2*H*)-isothiazolone
010806—00086	Contact Insect Repellent	Dipropyl isocinchomeronate
		N-Octyl bicycloheptene dicarboximide
		N,N-Diethyl-meta-toluamide and other isomers
010807—00125	Misty Anti-Crawl II Residual Insecticide	*o*-Isopropoxyphenyl methylcarbamate
		N-Octyl bicycloheptene dicarboximide
		(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20%
		Pyrethrins
010807—00165	Amrep 5006	*o*-Isopropoxyphenyl methylcarbamate
		(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20%
		Pyrethrins
010900—00074	878 Insect Repellent Spray	Dipropyl isocinchomeronate
		N-Octyl bicycloheptene dicarboximide
		N,N-Diethyl-meta-toluamide and other isomers
011556—00114	Mira Insect Repellent Spray for Horses	*N,N*-Diethyl-meta-toluamide and other isomers
012714—00003	Golden Sun Feeds Hi Phos ''12'' Larvi-Ban	2-Chloro-1-(2,4,5-trichlorophenyl)vinyl dimethyl phosphate
013283—00012	Rainbow Jungle Formula Insect Repellent	Dipropyl isocinchomeronate
		N-Octyl bicycloheptene dicarboximide
		N,N-Diethyl-meta-toluamide and other isomers
019713—00308	Drexel Lindane 20% E.C.	Lindane (Gamma isomer of benzene hexachloride) (99% pure gamma isomer
019713—00318	Southland Pearson 20% Borer Spray	Lindane (Gamma isomer of benzene hexachloride) (99% pure gamma isomer
019713—00358	Falls Lindane 20% Emulsifiable Concentrate	Lindane (Gamma isomer of benzene hexachloride) (99% pure gamma isomer
028293—00297	Martin's Cube Powder 5% Rotenone	Rotenone
		Cube Resins other than rotenone

TABLE 1—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product Name	Chemical Name
028293—00303	Martin's Bombane Jet Stream	Lindane (Gamma isomer of benzene hexachloride) (99% pure gamma isomer
028293—00304	Martins US-EQ 335 Screw Worm Remedy for Horses & Mules	Lindane (Gamma isomer of benzene hexachloride) (99% pure gamma isomer
		Pine oil
028293—00319	Martin's Rotenone Powder	Rotenone
		Cube Resins other than rotenone
034704—00122	Clean Crop Lindane 25 Seed Treater	Lindane (Gamma isomer of benzene hexachloride) (99% pure gamma isomer
034704—00219	Clean Crop Lindane 25wp Dyed Seed Treater	Lindane (Gamma isomer of benzene hexachloride) (99% pure gamma isomer
034704—00220	Clean Crop Lindane 75 WP Undyed Seed Treater	Lindane (Gamma isomer of benzene hexachloride) (99% pure gamma isomer
034704—00513	Dicofol 4EC	1,1-Bis(chlorophenyl)-2,2,2-trichloroethanol
034704—00673	Lindane 400 Undyed Flowable Liquid	Lindane (Gamma isomer of benzene hexachloride) (99% pure gamma isomer
034704—00720	Dichlorobenil 2G	2,6-Dichlorobenzonitrile
034704—00758	Best Garden Weeder	Dimethyl tetrachloroterephthalate
046515—00046	Insect Repellent 3	*N,N*-Diethyl-meta-toluamide and other isomers
054287—00005	Mosquito Guard	*N,N*-Diethyl-meta-toluamide and other isomers
054287—00006	Insect Guard	*N*-Octyl bicycloheptene dicarboximide
		N,N-Diethyl-meta-toluamide and other isomers
054287—00008	Insect Guard II	Dipropyl isocinchomeronate
		N-Octyl bicycloheptene dicarboximide
		N,N-Diethyl-meta-toluamide and other isomers
054287—00011	Deet Plus Insect Repellent	Dipropyl isocinchomeronate
		N-Octyl bicycloheptene dicarboximide
		N,N-Diethyl-meta-toluamide and other isomers
054287—00012	Deet Plus Composite Spray	Dipropyl isocinchomeronate
		N-Octyl bicycloheptene dicarboximide
		N,N-Diethyl-meta-toluamide and other isomers
055500—00001	Z-Stop	Zinc
056575—00009	Bens Backyard Formula Tick and Insect Repellent	Dipropyl isocinchomeronate
		N-Octyl bicycloheptene dicarboximide
		N,N-Diethyl-meta-toluamide and other isomers
056575—00010	Ben's Wilderness 50% Formula Tick & Insect Repellent	*N,N*-Diethyl-meta-toluamide and other isomers
062719—00309	Chlorpyrifos Technical	*O,O*-Diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate
068891 WA—89—0009	Enquik	Urea, sulfate (1:1) (8CI, 9CI) (CA INDEX NAME)
069421—00028	Screen Insect Repellent	*N,N*-Diethyl-meta-toluamide and other isomers
069421—00053	Black Flag Insect Repellent Spray	Dipropyl isocinchomeronate
		N-Octyl bicycloheptene dicarboximide
		N,N-Diethyl-meta-toluamide and other isomers

Unless a request is withdrawn by the registrant within 180 days of publication of this notice, orders will be issued cancelling all of these registrations. Users of these pesticides or anyone else desiring the retention of a registration should contact the applicable registrant directly during this 180-day period. The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA Company Number.

TABLE 2—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company Name and Address
000099	Watkins, Inc., 150 Liberty Street, Winona, MN 55987.
000100	Novartis Crop Protection, Inc., Box 18300, Greensboro, NC 27419.
000121	Spectrum, A Div of United Industries Corp., Box 15842, St. Louis, MO 63114.
000241	American Cyanamid Co., Agri Research Div - U.S. Regulatory Affair, Box 400, Princeton, NJ 08543.
000264	Rhone-Poulenc Ag Co., Box 12014, Research Triangle Park, NC 27709.
000279	FMC Corp., Agricultural Products Group, 1735 Market St., Philadelphia, PA 19103.
000334	Hysan/AMP, A Division of Specialty Chemical Resource, 9055 Freeway Drive, Macedonia, OH 44056.
000400	Uniroyal Chemical Co., Inc., 74 Amity Rd., Bethany, CT 06524.
000407	Imperial Inc., Attn: Gene R. Currie, Box 536, Hampton, IA 50441.
000478	Realex, Div of United Industries Corp., Box 15842, St. Louis, MO 63114.
000524	Monsanto Co., Agent For: Monsanto Agricultural Co., 600 13th Street, NW., Suite 660, Washington, DC 20005.
000538	The Scotts Co., 14111 Scottslawn Rd., Marysville, OH 43041.
000655	Prentiss Inc., C.B. 2000, Floral Park, NY 11001.
000707	Rohm & Haas Co., Attn: Robert H. Larkin, 100 Independence Mall W., Philadelphia, PA 19106.
000769	Sureco Inc., An Indirect Subsidiary of Verdant Brands, 9555 James Ave., South, Suite 200, Bloomington, MN 55431.
000829	Southern Agricultural Insecticides, Inc., Box 218, Palmetto, FL 34220.
001021	McLaughlin Gormley King Co., 8810 Tenth Ave., North, Minneapolis, MN 55427.
001685	The State Chemical Mfg. Co., 3100 Hamilton Ave, Cleveland, OH 44114.
002217	PBI/Gordon Corp., Attn: Craig Martens, Box 014090, Kansas City, MO 64101.
002596	Hartz Mountain Corp., 400 Plaza Dr., Secaucus, NJ 07094.
002792	ELF Atochem N.A. Inc., Decco Division, 1713 S. California Ave, Monrovia, CA 91017.
003487	Bacon Products Co., Inc., Box 22187, Chattanooga, TN 37422.
004822	S.C. Johnson & Son Inc., 1525 Howe Street, Racine, WI 53403.
005481	AMVAC Chemical Corp., Attn: Jon C. Wood, 2110 Davie Ave., Commerce, CA 90040.
005905	Helena Chemical Co., 6075 Poplar Ave., Suite 500, Memphis, TN 38119.
006718	Amway Corp., Technical/Regulatory Support Services, 7575 E. Fulton Rd., Ada, MI 49335.
009444	Waterbury Companies Inc., Box 640, Independence, LA 70443.
010107	Van Diest Supply Co., 1434 220th Street, Box 610, Webster City, IA 50595.
010707	Baker Petrolite Corp., Box 5050, Sugarland, TX 77487.
010806	Contact Industries, Div. of Safeguard Chemical Corp., 411 Wales Ave, Bronx, NY 10454.
010807	AMREP, Inc., 990 Industrial Dr., Marietta, GA 30062.
010900	Sherwin-Williams Diversified Brands Inc., 31500 Solon Rd., Solon, OH 44139.
011556	Bayer Corp., Agriculture Division, Animal Health, Box 390, Shawnee Mission, KS 66201.
012714	Golden Sun Feeds Inc., Highway 4 South, Estherville, IA 51334.
013283	Regwest Co., Agent For: Rainbow Technology Corp., Box 2220, Greeley, CO 80632.
019713	Drexel Chemical Co., 1700 Channel Ave., Box 13327, Memphis, TN 38113.
028293	Unicorn Laboratories, 12385 Automobile Blvd., Clearwater, FL 33762.
034704	Cherie Garner, Agent For: Platte Chemical Co., Inc., Box 667, Greeley, CO 80632.
046515	Celex, Division of United Industries Corp., Box 15842, St. Louis, MO 63114.
054287	Regwest Co., Agent For: Associated Registrations, Box 2220, Greeley, CO 80632.
055500	WESPAC Enterprises Inc., Box 46337, Seattle, WA 98146.
056575	Tender Corp., Littleton Industrial Park, Box 290, Littleton, NH 03561.
062719	Dow Agrosciences LLC, 9330 Zionsville Rd., 308/3E, Indianapolis, IN 46268.
068891	Entek Corp., 1912 E. Lemon Heights Drive, Santa Ana, CA 92705.
069421	Black Flag Insect Control Systems, c/o PS & RC, Box 493, Pleasanton, CA 94566.

III. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to James A. Hollins, at the address given above, postmarked before November 22, 1999. This written withdrawal of the request for cancellation will apply only to the applicable 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

IV. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. The orders effecting these requested cancellations will generally permit a registrant to sell or distribute existing stocks for 1 year after the date the cancellation request was received. This policy is in accordance with the Agency's statement of policy as prescribed in **Federal Register** (56 FR 29362) June 26, 1991; [FRL 3846–4]. Exceptions to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a data call-in. In all cases, product-specific disposition dates will be given in the cancellation orders.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product(s). Exceptions to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in Special Review actions, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: May 13, 1999.

Richard D. Schmitt,

Acting Director, Information Resources and Services Division, Office of Pesticide Programs.

[FR Doc. 99–13378 Filed 5–25–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–874; FRL–6081–3]

Notice of Filing of Pesticide Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by the docket control number PF–874, must be received on or before June 25, 1999.

ADDRESSES: By mail submit written comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticides Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 119, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically to: opp-docket@epamail.epa.gov. Follow the instructions under ''SUPPLEMENTARY INFORMATION.'' No confidential business information should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 119 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: The product manager listed in the table below:

Product Manager	Office location/telephone number	Address
JoAnne Miller	Rm. 237, CM #2, 703–305–6224, e-mail:miller.joanne@epamail.epa.gov.	1921 Jefferson Davis Hwy, Arlington, VA
Bipin C. Gandhi	Rm. 707A, CM #2, 703–305–7740, e-mail: gandhi.bipin@epamail.epa.gov.	Do.

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

The official record for this notice of filing, as well as the public version, has been established for this notice of filing under docket control number [PF–874] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in ''ADDRESSES'' at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in Wordperfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by

the docket control number [PF-874] and appropriate petition number. Electronic comments this on notice may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 13, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Summaries of Petitions

Petitioner summaries of the pesticide petitions are printed below as required by section 408(d)(3) of the FFDCA. The summaries of the petitions were prepared by the petitioners and represent the views of the petitioners. EPA is publishing the petition summaries verbatim without editing them in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

1. Novartis Crop Protection, Inc.

PP 7F4897

EPA has received an amended pesticide petition (7F4897) from Novartis Crop Protection, Inc., P.O. Box 18300, Greensboro, NC 27419 proposing, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180.368 by establishing and amending current tolerances for residues of metolachlor (2-chloro-N-(2-ethyl-6-methylphenyl)-N-(2-methoxy-1-methylethyl)acetamide and its metabolites, determined as the derivatives, 2-[(2-ethyl-6-methylphenyl)amino]-1-propanol and 4-(2-ethyl-6-methylphenyl)-2-hydroxy-5-methyl-3-morpholinone, each expressed as the parent compound, in or on the raw agricultural commodities sunflower seed at 0.5 parts per million (ppm); sunflower meal at 1.0 ppm; sugar beet tops at 15.0 ppm; sugar beet roots at 0.5 ppm; sugar beet dried pulp at 1.0 ppm; sugar beet molasses at 3.0 ppm; cotton gin trash at 5.0 ppm; liver (of goats, hogs, horses, sheep, cattle) at 0.1 ppm and kidney (of goats, hogs, horses, sheep, cattle) at 0.5 ppm. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism*. The qualitative nature of the metabolism of metolachlor in plants is well understood. Metabolism in plants involves conjugation of the chloroacetyl side chain with glutathione, with subsequent conversion to the cysteine and thiolactic acid conjugates. Oxidation to the corresponding sulfoxide derivatives occurs and cleavage of the side chain ether group, followed by conjugation with glucose.

2. *Analytical method*. Novartis has submitted a practical analytical method involving extraction by acid reflux, filtration, partition and cleanup with analysis by gas chromatography using Nitrogen/Phosphorous (N/P) detection. The methodology converts residues of metolachlor into a mixture of CGA-37913 and CGA-49751. The limit of quantitation (LOQ) for the method is 0.03 ppm for CGA-37913 and 0.05 ppm for CGA-49751.

3. *Magnitude of residues*—i. *Sunflower*. A total of 15 residue trials were conducted in major sunflower growing areas of the United States. Applications were made at 1- and 2x the maximum labeled rate of 3.0 lbs. ai/A (metolachlor). Processing was also conducted with seeds processed into meal, hulls, crude oil, refined oil and soapstock. Based on these studies, tolerances are proposed in sunflower seed at 0.5 ppm and in sunflower meal at 1.0 ppm.

ii. *Sugarbeets*. Eleven sugar beet trials were conducted using six different treatment scenarios. The maximum 1x use rate was 4.0 lbs. active ingredient (ai)/A of S-metolachlor applied preplant surface or preplant incorporated (1.33 lbs. ai/A) plus a post foliar spray (2.66 lbs. ai/A). 3x and 5x treatments were also conducted. Maximum residues at the 1x rate were 14 ppm in sugar beet tops and 0.32 ppm in sugar beet roots. Using theoretical animal diets, Novartis determined that current tolerances for metolachlor in kidney and liver may not be adequate to cover residues resulting from the feeding of sugar beet tops in combination with peanut hay and sorghum grain. In the processing study, it was determined that tolerances would be required in dried pulp and molasses, but not in refined sugar.

iii. *Cotton*. Results of data submitted September 1998, to address an EPA request for residue data to determine residues of metolachlor in cotton gin trash indicated a tolerance of 5.0 ppm needed to be established for metolachlor in this raw agricultural commodity (RAC).

B. Toxicological Profile

1. *Acute toxicity*. Metolachlor has a low order of acute toxicity. The combined rat oral LD_{50} is 2,877 milligrams/kilograms (mg/kg). The acute rabbit dermal LD_{50} is > 2,000 mg/kg and the rat inhalations LC_{50} is > 4.33 milligrams per liter (mg/L). Metolachlor is not irritating to the skin and eye. It was shown to be positive in guinea pigs for skin sensitization. End use formulations of metolachlor also have a low order of acute toxicity and cause slight skin and eye irritation.

2. *Genotoxicity*. Assays for genotoxicity were comprised of tests evaluating metolachlor's potential to induce point mutations (*Salmonella* assay and an L5178/TK+/- mouse lymphoma assay), chromosome aberrations (mouse micronucleus and a dominant lethal assay) and the ability to induce either unscheduled or scheduled DNA synthesis in rat hepatocytes or DNA damage or repair in human fibroblasts. The results indicate that metolachlor is not mutagenic or clastogenic and does not provoke unscheduled DNA synthesis.

3. *Reproductive and developmental toxicity*. The developmental and teratogenic potential of metolachlor was investigated in rats and rabbits. The results indicate that metolachlor is not embryotoxic or teratogenic in either species at maternally toxic doses. The no-observed adverse effect level (NOAEL) for developmental toxicity for metolachlor was 360 mg/kg/day for both the rat and rabbit, while the NOAEL for maternal toxicity was established at 120 mg/kg/day in the rabbit and 360 mg/kg/day in the rat. A 2-generation reproduction study was conducted with metolachlor in rats at feeding levels of 0, 30, 300 and 1,000 ppm. The reproductive NOAEL of 300 ppm (equivalent to 23.5 to 26 mg/kg/day) was based upon reduced pup weights in the F1a and F2a litters at the 1,000 ppm dose level (equivalent to 75.8 to 85.7 mg/kg/day). The NOAEL for parental toxicity was equal to or greater than the 1,000 ppm dose level.

4. *Subchronic toxicity*. Metolachlor was evaluated in a 21-day dermal toxicity study in the rabbit and a 6-month dietary study in dogs; NOAELs of 100 mg/kg/day and 7.5 mg/kg/day were established in the rabbit and dog, respectively. The liver was identified as the main target organ. Metolachlor was also recently evaluated in a new 90-day subchronic feeding study in rats. The

NOAEL was defined as 300 ppm, corresponding to average daily intakes of 20.2 mg/kg body weight (bwt) in males and 23.4 mg/kg bwt in females.

5. *Chronic toxicity*. A 1 year dog study was conducted at dose levels of 0, 3.3, 9.7, or 32.7 mg/kg/day. The reference dose (RfD) for metolachlor is based on the 1 year dog study with a NOAEL of 9.7 mg/kg/day. The RfD for metolachlor is established at 0.1 mg/kg/day using a 100-fold uncertainty factor. A combined chronic toxicity/oncogenicity study was also conducted in rats at dose levels of 0. 1.5, 15 or 150 mg/kg/day. The NOAEL for systemic toxicity was 15 mg/kg/day.

6. *Animal metabolism*. In animals, metolachlor is rapidly metabolized and almost totally eliminated in the excreta of rats, goats, and poultry. Metabolism in animals proceeds through common Phase 1 intermediates and glutathione conjugation.

7. *Metabolite toxicology*. The metabolism of metolachlor has been well characterized in standard Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) rat metabolism studies. The metabolites found are considered to be toxicologically similar to parent. Metolachlor does not readily undergo dealkylation to form an aniline or quinone imine as has been reported for other members of the chloroacetanilide class of chemicals. Therefore, it is not appropriate to include metolachlor with the group of chloroacetanilides that readily undergo dealkylation, producing a common toxic metabolite (quinone imine).

8. *Endocrine disruption*. Metolachlor does not belong to a class of chemicals known or suspected of having adverse effects on the endocrine system. There is no evidence that metolachlor has any effect on endocrine function in developmental or reproduction studies. Furthermore, histological investigation of endocrine organs in the chronic dog, rat and mouse studies conducted with metolachlor did not indicate that the endocrine system is targeted by metolachlor, even at maximally tolerated doses administered for a lifetime. Although residues of metolachlor have been found in RAC, there is no evidence that metolachlor bioaccumulates in the environment.

C. Aggregate Exposure

1. *Dietary exposure*. For purposes of assessing the potential dietary exposure to metolachlor, aggregate exposure has been estimated based on the theoretical maxium residue contribution (TMRC) from the use of metolachlor in or on RAC for which tolerances have been previously established (40 FR 180.368). The incremental effect on dietary risk resulting from the addition of the uses on sunflowers and sugarbeets was also included by conservatively assuming that exposure would occur at the proposed tolerance levels with 100% of the crop treated.

i. *Food*. The TMRC is obtained by multiplying the tolerance level residue for all these RAC by the consumption data which estimates the amount of these products consumed by various population subgroups. Some of these RAC (e.g. corn forage and fodder, peanut hay, sunflower meal, sugarbeet tops) are fed to animals; thus exposure of humans to residues in these fed commodities might result if such residues are transferred to meat, milk, poultry, or eggs. Therefore, tolerances of 0.02 ppm for milk, meat and eggs and 0.2 ppm for kidney and 0.05 ppm for liver have been previously established for metolachlor. Based upon theoretical diets constructed from the sugar beet residue data, Novartis is proposing raising the tolerances in kidney (0.5 ppm) and liver (0.1 ppm) to cover any transfer of residues to animals that may occur from the feeding of treated sugar beet tops. In conducting this exposure assessment, it has been conservatively assumed that 100% of all RAC for which tolerances have been established or proposed in this petition for metolachlor will contain metolachlor residues and those residues would be at the level of the tolerance, which results in an over estimation of human exposure.

ii. *Drinking water*. Another potential source of exposure of the general population to residues of pesticides are residues in drinking water. Environmental fate studies show that metolachlor appears to be moderately persistent and ranges from being mobile to highly mobile in different soils. Based on experience with metolachlor, it is believed metolachlor will be infrequently found in drinking water sources, and when found, will be in the low parts per billion (ppb) range. Metolachlor is not yet regulated under the Safe Drinking Water Act; therefore, no maximum contaminant level (MCL) has been established for it. A 1-10 day Health Advisory Level has been established at 2,000 ppb and a Lifetime Health Advisory Level has been established at 100 ppb. It is not likely that maximum or average concentrations of metolachlor will exceed the 1-10 day HA levels or that annual average metolachlor concentrations will exceed the lifetime HA of 100 ppb. In addition, through the reregistration process, Novartis has amended its labels to include further protections to minimize ground and surface water contamination.

2. *Non-dietary exposure*. Although metolachlor may be used on turf and ornamentals in a residential setting, that use represents less than 0.1% of the total herbicide market for residential turf and landscape uses. No indoor uses of metolachlor are registered. Currently, there are no acceptable, reliable exposure data available to assess any potential risks. However, given the small amount of material that is used, it is concluded that the potential for non-occupational exposure to the general population is unlikely. EPA has identified a toxicity endpoint for intermediate-term residential risks. Based on the high level of this endpoint (NOAEL of 100 mg/kg/day and lowest-observed adverse effect level (LOAEL) of 1,000 mg/kg/day from the 21-day dermal toxicity study in rabbits), EPA has said it does not expect the intermediate-term aggregate risk to exceed the level of concern.

D. Cumulative Effects

The potential for cumulative effects of metolachlor and other substances that have a common mechanism of toxicity has also been considered. It is concluded that consideration of a common mechanism of toxicity with other registered pesticides in this chemical class (chloroacetamides) is not appropriate. Since EPA itself has stated that the carcinogenic potential of metolachlor is not the same as other registered chloroacetamide herbicides, based on differences in rodent metabolism (EPA Peer Review of metolachlor, 1994), it is believed that metolachlor should only be considered in an aggregate exposure assessment and not a cumulative assessment.

E. Safety Determination

1. *U.S. population*. Using the conservative exposure assumptions described above, based on the the completeness and reliability of the toxicity data, it is concluded that aggregate exposure to metolachlor (including the proposed uses) in food will utilize 2.06% of the RfD for the U.S. population. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to metolachlor in drinking water and from non-dietary, non-occupational exposures, it is not expected that aggregate exposure from all sources will exceed 100% of the RfD. Therefore, one can conclude there is a reasonable certainty that no harm will result from aggregate exposure to metolachlor.

2. *Infants and children*. In assessing the potential for additional sensitivity of infants and children to residues of metolachlor, data from developmental toxicity studies in the rat and rabbit and a 2-generation reproduction study in the rat have been considered. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from chemical exposure during prenatal development to one or both parents. Reproduction studies provide information relating to effects from exposure to a chemical on the reproductive capability of mating animals and data on systemic toxicity.

Developmental toxicity (reduced mean fetal bwt, reduced number of implantations/dam with resulting decreased litter size, and a slight increase in resorptions/dam with a resulting increase in post-implantation loss) was observed in studies conducted with metolachlor in rats and rabbits. The NOAEL's for developmental effects in both rats and rabbits were established at 360 mg/kg/day. The developmental effect observed in the metolachlor rat study is believed to be a secondary effect resulting from maternal stress (lacrimation, salivation, decreased bwt gain and food consumption and death) observed at the limit dose of 1,000 mg/kg/day.

A 2-generation reproduction study was conducted with metolachlor at feeding levels of 0, 30, 300 and 1,000 ppm. The reproductive NOAEL of 300 ppm (equivalent to 23.5 to 26 mg/kg/day) was based upon reduced pup weights in the F1a and F2a litters at the 1,000 ppm dose level (equivalent to 75.8 to 85.7 mg/kg/day). The NOAEL for parental toxicity was equal to or greater than the 1,000 ppm dose level.

FFDCA section 408 provides that EPA may apply an additional safety factor for infants and children in the case of threshold effects to account for pre- and postnatal toxicity and the completeness of the data base. Based on the current toxicological data requirements, the data base relative to pre- and postnatal effects for children is complete. Further, for the chemical metolachlor, the NOAEL of 9.7 mg/kg/day from the metolachlor chronic dog study, which was used to calculate the RfD (discussed above), is already lower than the developmental NOAELs of 360 mg/kg/day from the metolachlor teratogenicity studies in rats and rabbits. With regard to the metolachlor reproduction study, the lack of severity of the pup effects observed (decreased bwt) in the reproduction study at the systemic LOAEL (equivalent to 75.8 to 85.7 mg/kg/day) and the fact that the effects were observed at a dose that is nearly 10 times greater than the NOAEL in the chronic dog study (9.7 mg/kg/day), suggest there is no additional sensitivity for infants and children. Therefore, it is concluded that an additional uncertainty factor is not warranted to protect the health of infants and children and that the RfD at 0.1 mg/kg/day based on the chronic dog study is appropriate for assessing aggregate risk to infants and children from use of metolachlor.

Using the conservative exposure assumptions described above, the percent of the RfD that will be utilized by aggregate exposure to residues of metolachlor is 1.27% for nursing infants less than 1 year old, 4.13% for non-nursing infants, 4.42% for children 1-6 years old and 3.26% for children 7-12 years old. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to metolachlor in drinking water and from non-dietary, non-occuptional exposure, it is not expected that aggregate exposure from all sources will exceed 100% of the RfD. Therefore, based on the completeness and reliability of the toxicity data and the conservative exposure assessment, it is concluded there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to metolachlor residues.

F. International Tolerances

There are no Codex Alimentarius Commission (CODEX) maximum residue levels (MRL's) established for residues of metolachlor in or on RAC.

2. Omnichem S.A., Industrial Research Park, 1348 Louvain-La-Neuve, Belgium

PP 8E4950

EPA has received a pesticide petition (8E4950) from Omnichem S.A., Industrial Research Park, 1348 Louvain-La-Neuve, Belgium proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an exemption from the requirement of a tolerance for a range of α-alkyl (C_{12} - C_{18})-ω-hydroxypoly(oxypropylene) poly(oxyethylene) copolymers (where the poly(oxypropylene) content is 3-60 moles and the poly(oxyethylene) content is 5-80 moles) when used in accordance with good agricultural practices as an inert ingredient in pesticide formulations applied to growing agricultural crops in or on the RAC after harvest or to animals at ppm. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Toxicological Profile

In the case of certain chemical substances that are defined as ''polymers,'' the Agency has established a set of criteria which identify categories of polymers that present low risk. These criteria (described in 40 CFR 723.250) identify polymers that are relatively unreactive and stable compounds compared to other chemical substances as well as polymers that typically are not readily absorbed. These properties generally limit a polymer's ability to cause adverse effects. In addition, these criteria exclude polymers about which little is known. The Agency believes that polymers meeting the criteria noted above will present minimal or no risk. Alpha-alkyl (C_{12} - C_{18})-ω-hydroxypoly(oxypropylene) poly(oxyethylene) copolymers (where the poly(oxypropylene) content is 3-60 moles and the poly(oxyethylene) content is 5-80 moles) conform to the definition of a polymer given in 40 CFR 723.250(b) and meet the following criteria that are used to identify low risk polymers.

1. Alpha-alkyl (C_{12} - C_{18})-ω-hydroxypoly(oxypropylene) poly(oxyethylene) copolymers (where the poly(oxypropylene) content is 3-60 moles and the poly(oxyethylene) content is 5-80 moles) are not cationic polymers, nor are they capable of becoming a cationic polymer in the natural aquatic environment.

2. Alpha-alkyl (C_{12} - C_{18})-ω-hydroxypoly(oxypropylene) poly(oxyethylene) copolymers (where the poly(oxypropylene) content is 3-60 moles and the poly(oxyethylene) content is 5-80 moles) contains as an integral part of their composition the atomic elements carbon, hydrogen, and oxygen.

3. Alpha-alkyl (C_{12} - C_{18})-ω-hydroxypoly(oxypropylene) poly(oxyethylene) copolymers (where the poly(oxypropylene) content is 3-60 moles and the poly(oxyethylene) content is 5-80 moles) do not contain as an integral part of their composition, except as impurities, any element other than those listed in 40 CFR 723.250(d)(2)(iii).

4. Alpha-alkyl (C_{12} - C_{18})-ω-hydroxypoly(oxypropylene) poly(oxyethylene) copolymers (where the poly(oxypropylene) content is 3-60 moles and the poly(oxyethylene) content is 5-80 moles) are not designed, nor are they reasonably anticipated to substantially degrade, decompose or depolymerize.

5. Alpha-alkyl (C_{12} - C_{18})-ω-hydroxypoly(oxypropylene) poly(oxyethylene) copolymers (where the poly(oxypropylene) content is 3-60 moles and the poly(oxyethylene) content is 5-80 moles) are not manufactured or imported from monomers and/or other reactants that are not already included on the TSCA Chemical Substance Inventory or manufactured under an applicable TSCA section 5 exemption.

6. Alpha-alkyl (C_{12} - C_{18})-ω-hydroxypoly(oxypropylene) poly(oxyethylene) copolymers (where the poly(oxypropylene) content is 3-60 moles and the poly(oxyethylene) content is 5-80 moles) are not a water absorbing polymer with a number average molecular weight greater than or equal to 10,000 daltons.

7. The minimum number-average molecular weight of α-alkyl (C_{12}- C_{18})-ω- hydroxypoly(oxypropylene) poly(oxyethylene) copolymers (where the poly(oxypropylene) content is 3-60 moles and the poly(oxyethylene) content is 5-80 moles) is 1,517 daltons. Substances with molecular weights greater than 400 generally are not absorbed through the intact skin, and substances with molecular weights greater than 1,000 normally are not absorbed through the intact gastrointestinal (GI) tract. Chemicals not absorbed through the skin or GI tract usually are incapable of eliciting a toxic response.

8. Alpha-alkyl (C_{12} - C_{18})-ω-hydroxypoly(oxypropylene) poly(oxyethylene) copolymers (where the poly(oxypropylene) content is 3-60 moles and the poly(oxyethylene) content is 5-80 moles) has a range of molecular weights from a minimum of 1,517 to a maximum or 4,540 and contains less than 2% oligomeric material below molecular weight 500 and less than 5% oligomeric material below 1,000 molecular weight.

9. Alpha-alkyl (C_{12} - C_{18})-ω-hydroxypoly(oxypropylene) poly(oxyethylene) copolymers (where the poly(oxypropylene)content is 3-60 moles and the poly(oxyethylene) content is 5-80 moles) does not contain reactive functional groups.

10. There is no evidence that α-alkyl (C_{12} - C_{18})- ω-hydroxypoly(oxypropylene) poly(oxyethylene) copolymers (where the poly(oxypropylene) content is 3-60 moles and the poly(oxyethylene) content is 5-80 moles) are endocrine disrupters, whereas substances with molecular weights greater than 400 generally are not absorbed through the intact skin, and substances with molecular weights greater than 1,000 normally are not absorbed through the intact gastrointestinal tract (GI). Chemicals not absorbed through the skin or GI tract usually are incapable of eliciting a toxic response.

B. Aggregate Exposure

1. *Dietary exposure*. Alpha-alkyl (C_{12} - C_{18})- ω- hydroxypoly(oxypropylene) poly(oxyethylene) copolymers (where the poly(oxypropylene) content is 3-60 moles and the poly(oxyethylene) content is 5-80 moles) are not absorbed through the intact GI tract and are considered incapable of eliciting a toxic response.

i. *Food*. Alpha-alkyl (C_{12} - C_{18})-ω-hydroxypoly(oxypropylene) poly(oxyethylene) copolymers (where the poly(oxypropylene) content is 3-60 moles and the poly(oxyethylene) content is 5-80 moles) are not absorbed through the intact GI tract and are considered incapable of eliciting a toxic response.

ii. *Drinking water*. Even though some members of this family of polymers are water soluble, the high binding capacity to clay particles renders them immobile. Based upon the high binding to clay of α-alkyl (C_{12} - C_{18})-ω-hydroxypoly(oxypropylene) poly(oxyethylene) copolymers (where the poly(oxypropylene) content is 3-60 moles and the poly(oxyethylene) content is 5-80 moles,) there is no reason to expect human exposure to residues in drinking water. The copolymers are biodegraded in the environment over time into small molecular units that are easily mineralized into the soil matrix or utilized by the microbial populations. These small molecular units are considered to be toxicologically safe.

2. *Non-dietary exposure*. Typical use of this type of polymer is in the detergent formulations.

C. Cumulative Effects

There are data that support cumulative risk from α-alkyl (C_{12} - C_{18})-ω- hydroxypoly(oxypropylene) poly(oxyethylene) copolymers (where the poly(oxypropylene) content is 3-60 moles and the poly(oxyethylene) content is 5-80 moles), since polymers with molecular weights greater than 400 are not readily absorbed through the intact skin and substances with molecular weights greater than 1,000 are not normally absorbed through the intact GI tract. Chemicals not absorbed through the skin or GI tract generally are incapable of eliciting a toxic response. Therefore, there are no reasonable expectations of increased risk due to cumulative exposure.

D. Safety Determination

1. *U.S. population*. Alpha-alkyl (C_{12} - C_{18})-ω- hydroxypoly(oxypropylene) poly(oxyethylene) copolymers (where the poly(oxypropylene) content is 3-60 moles and the poly(oxyethylene) content is 5-80 moles) cause no safety concerns because they conform to the definition of a low risk polymer given in 40 CFR 723.250(b) and as such are considered incapable of eliciting a toxic response. Also, there are no additional pathways of exposure (non-occupational, drinking water, etc.) where there would be additional risk.

2. *Infants and children*. Alpha-alkyl (C_{12} - C_{18})-ω-hydroxypoly(oxypropylene) poly(oxyethylene) copolymers (where the poly(oxypropylene) content is 3-60 moles and the poly(oxyethylene) content is 5-80 moles) cause no aditional concern to infants and children because the polymers conform to the definition of a low risk polymer given in 40 FR 723.250(b) and as such are considered incapable of eliciting a toxic response. Also, there are no additional pathways of exposure (non-occupational, drinking water, etc.) where infants and children would be additional risk.

E. International Tolerances

We are not aware of any country requiring a tolerance for α-alkyl (C_{12} - C_{18})-ω- hydroxypoly(oxypropylene) poly(oxyethylene) copolymers (where the poly(oxypropylene) content is 3-60 moles and the poly(oxyethylene) content is 5-80 moles). Nor have there been any CODEX Maximum Residue Levels (MRLs) established for any food crops at this time.

Omnichem SA is petitioning that α-alkyl (C_{12} - C_{18})-ω-hydroxypoly(oxypropylene) poly(oxyethylene) copolymers (where the Poly(oxypropylene) content is 3-60 moles and the poly(oxyethylene) content is 5-80 moles) be exempt from the requirement of a tolerance based upon the low risk polymer definition as per 40 CFR 723.250. Therefore, an analytical method to determine residues of α-alkyl (C_{12} - C_{18})-ω- hydroxypoly (oxypropylene)

poly(oxyethylene) copolymers in RAC has not been proposed.

[FR Doc. 99–13035 Filed 5–25–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00600; FRL–6081–6]

Pesticides; Policy Issues Related to the Food Quality Protection Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: To assure that EPA's policies related to implementing the Food Quality Protection Act are transparent and open to public participation, EPA is soliciting comments on a draft policy paper entitled ''Use of the Pesticide Data Program in Acute Dietary Assessment.'' This notice is the eighth in a series concerning science policy documents related to the Food Quality Protection Act and developed through the Tolerance Reassessment Advisory Committee.

DATES: Comments for this policy paper, identified by docket control number OPP–00600, must be received on or before July 26, 1999.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the ''SUPPLEMENTARY INFORMATION'' section of this document. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00600 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Kathleen Martin, Environmental Protection Agency (7509C), 401 M St., SW., Washington, DC 20460. Office location and telephone number: 1921 Jefferson Davis Highway (7509C), Arlington, VA, 22207; (703) 308–2857; fax: (703) 305–5147; e-mail address: martin.kathleen@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Notice Apply to Me?

You may be potentially affected by this notice if you manufacture or formulate pesticides. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of potentially affected entities
Pesticide producers	32532	Pesticide manufacturers Pesticide formulators

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed could also be affected. If available, the North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this notice affects certain entities. If you have any questions regarding the applicability of this announcement to you, consult the person listed in the ''FOR FURTHER INFORMATION CONTACT'' section of this document.

B. How Can I Get Additional Information or Copies of This Document or Other Documents?

1. *Electronically*. You may obtain electronic copies of this document and the science policy paper from the EPA Home Page under the Office of Pesticide Programs at http://www.epa.gov/pesticides/. On the Office of Pesticide Program Home Page select ''TRAC'' and then look up the entry for this document. You can also go directly to the listings at the EPA Home Page at the **Federal Register**—Environmental Documents entry for this document under ''Laws and Regulations'' (http://www.epa.gov/fedrgstr/) to obtain this notice and the science policy paper.

2. *Fax on Demand*. You may request to receive a faxed copy of this document, as well as supporting information, by using a faxphone to call (202) 401–0527 and selecting item 6035. You may also follow the automated menu.

3. *In person or by phone*. If you have any questions or need additional information about this action, you may contact the person identified in the ''FOR FURTHER INFORMATION CONTACT'' at the beginning of this document. In addition, the official record for the science policy paper listed in the ''SUMMARY'' at the beginnng of this document, including the public version, has been established under docket control number OPP–00600 (including comments and data submitted electronically as described below). This record not only includes the documents that are physically located in the docket, but also includes all the documents that are referenced in those documents. Public versions of these records, including printed, paper versions of any electronic comments, which do not include any information claimed as Confidential Business Information (CBI), are available for inspection in Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Public Information and Records Integrity Branch telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00600 in the subject line on the first page of your response.

1. *By mail*. Submit written comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier*. Deliver written comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

3. *Electronically*. Submit your comments and/or data electronically by e-mail to: opp-docket@epa.gov. Do not submit any information electronically that you consider to be CBI. Submit electronic comments as an ASCII file, avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard computer disks in WordPerfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number. Electronic comments on this notice may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI Information That I Want to Submit to the Agency?

You may claim information that you submit in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in

accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. If you have any questions about CBI or the procedures for claiming CBI, the Public Information and Records Integrity Branch telephone number is (703) 305–5805.

E. What Should I Consider As I Prepare My Comments for EPA?

EPA invites you to provide your views on the various draft science policy papers, new approaches we have not considered, the potential impacts of the various options (including possible unintended consequences), and any data or information that you would like the Agency to consider. You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide solid technical information and/or data to support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate.
5. Indicate what you support, as well as what you disagree with.
6. Provide specific examples to illustrate your concerns.
7. Make sure to submit your comments by the deadline in this notice.
8. At the beginning of your comments (e.g., as part of the ''Subject'' heading), be sure to properly identify the document you are commenting on. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00600 in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

On August 3, 1996, the Food Quality Protection Act of 1996 (FQPA) was signed into law. Effective upon signature, the FQPA significantly amended the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). Among other changes, FQPA established a stringent health-based standard (''a reasonable certainty of no harm'') for pesticide residues in foods to assure protection from unacceptable pesticide exposure; provided heightened health protections for infants and children from pesticide risks; required expedited review of new, safer pesticides; created incentives for the development and maintenance of effective crop protection tools for farmers; required reassessment of existing tolerances over a 10-year period; and required periodic re-evaluation of pesticide registrations and tolerances to ensure that scientific data supporting pesticide registrations will remain up-to-date in the future.

Subsequently, the Agency established the Food Safety Advisory Committee (FSAC) as a subcommittee of the National Advisory Council for Environmental Policy and Technology (NACEPT) to assist in soliciting input from stakeholders and to provide input to EPA on some of the broad policy choices facing the Agency and on strategic direction for the Office of Pesticide Programs. The Agency has used the interim approaches developed through discussions with FSAC to make regulatory decisions that met FQPA's standard, but that could be revisited if additional information became available or as the science evolved. As EPA's approach to implementing the scientific provisions of FQPA has evolved, the Agency has sought independent review and public participation, often through presentation of many of the science policy issues to the FIFRA Scientific Advisory Panel (SAP), a group of independent, outside experts who provide peer review and scientific advice to OPP.

In addition, as directed by Vice President Albert Gore, EPA has been working with the U.S. Department of Agriculture (USDA) and another subcommittee of NACEPT, the Tolerance Reassessment Advisory Committee (TRAC), chaired by the EPA Deputy Administrator and the USDA Deputy Secretary, to address FQPA issues and implementation. TRAC comprises more than 50 representatives of affected user, producer, consumer, public health, environmental, states and other interested groups. The TRAC has met six times as a full committee from May 27 through April 29, 1999.

The Agency has been working with the TRAC to ensure that its science policies, risk assessments of individual pesticides, and process for decision making are transparent and open to public participation. An important product of these consultations with TRAC is the development of a framework for addressing key science policy issues. The Agency decided that the FQPA implementation process and related policies would benefit from initiating notice and comment on the major science policy issues.

The TRAC identified nine science policy issue areas they believe were key to implementation of FQPA and tolerance reassessment. The framework calls for EPA to provide one or more documents for comment on each of the nine issues by announcing their availability in the **Federal Register**. In accordance with the framework described in a separate notice published in the **Federal Register** of October 29, 1998 (63 FR 58038) (FRL–6041–5), EPA has been issuing a series of draft documents concerning nine science policy issues identified by the TRAC related to the implementation of FQPA. This notice announces the availability of one of those draft documents as identified in the ''SUMMARY'' at the beginning of this document.

III. Summary of ''Use of the Pesticide Data Program (PDP) in Acute Dietary Assessment''

The Environmental Protection Agency's (EPA) Office of Pesticide Programs (OPP) has identified a statistical methodology for applying existing information from the USDA Pesticide Data Program (PDP) report to risk assessments of the acute exposure to pesticide residues in food. This methodology consists of extrapolating from data on pesticide residues in composite samples of fruits and vegetables to residue levels in single units of fruits and vegetables. Given the composite sample mean (), the composite sample variance (S2), and the number of units in each composite sample, it is possible to estimate the mean and variance (μ and $\sigma 2$) of the pesticide residues present on single units of fruits and vegetables. These parameters can then be applied to generate information on the level of residue in fruits and vegetables. This information can then be incorporated into a probabilistic exposure estimation model, such as the Monte Carlo method, in order to estimate exposure to pesticide residues in foods and the risk attendant to that exposure. This methodology has a higher degree of accuracy when more than 30 composite samples have detectable residues.

Other organizations have developed similar methodologies for extrapolating from residue levels in composite samples to residue levels in single servings. These organizations include Sielken Inc. and Novigen Sciences, Inc. Because the methods developed by these two organizations originate from the same fundamental assumption that residues on individual serving sizes of fruits and vegetables follow a lognormal

distribution, their results are similar to those of OPP.

OPP has recently started to apply the methodology described herein to estimate acute dietary exposure to pesticide residues in food. OPP is asking the FIFRA Scientific Advisory Panel and the public to answer specific questions regarding the methodology.

IV. Questions/Issues for Comment

While comments are invited on any aspect of the draft policy paper, EPA is particularly interested in comments on the following questions and issues.

1. Measurements of many natural processes may be described by typical statistical distributions, e.g., normal, lognormal, etc. In previous data-fit studies, data on concentration of residues on fruits and vegetables have been fitted to a lognormal distribution. The lognormality of residues has been established as a fundamental assumption in the decomposition procedure. Please comment on the assumption of lognormality.

2. The application of OPP's decomposition methodology calls for at least 30 ''detects.'' This is done to assure that there is enough representation in the sample and that the extrapolation will cover the width of the distribution of single servings. Although 30 detects is a practical rule for the application of the procedure, please comment on the consideration of other numbers as a practical rule of application.

3. The standard deviation within a composite cannot be greater than the standard deviation of the population of individual residues. Are there any circumstances when this statement is not true? If so, what are these circumstances?

4. OPP acknowledges that the collection of composite samples in the PDP protocol is not purely random; therefore, the decomposition procedure will produce an overestimation of the standard deviation of the lognormal distributions of residues on fruits and vegetables. Moreover, the overestimation of the standard deviation is accentuated to the degree that the collection of composite samples departs from pure randomness. The consequence of overestimating the standard deviation is that the high end of the estimates of residues in single serving size samples may exceed what occurs in reality. What criteria (if any) should be used to establish an upper-bound on the amount of residue projected in a single serving size sample to address the potential for overestimation of the standard deviation? How should the distribution of residues in single servings samples be interpreted when the PDP protocol does not assure that individual single servings samples are not randomly collected?

5. OPP's methodology is sensitive to the number (N) of single units/servings of a commodity estimated to be in a composite sample. Please comment on how to estimate that number for different commodities. Consider how to handle fruits for which a single serving is typically only a part of a unit of a commodity (e.g., a melon) or many different units (e.g., grapes) even though the single serving is smaller than the typical composite sample.

6. When there is considerable uncertainty about the number (N) of single units/servings of a commodity in a composite sample, should OPP generate several distributions of residues in single servings that encompass the possible range of values for N? Should these distributions in turn be used in DEEM to represent uncertainty in dietary exposure estimates?

V. Policies Not Rules

The draft policy document discussed in this notice is intended to provide guidance to EPA personnel and decision-makers, and to the public. As a guidance document and not a rule, the policy in this guidance is not binding on either EPA or any outside parties. Although this guidance provides a starting point for EPA risk assessments, EPA will depart from its policy where the facts or circumstances warrant. In such cases, EPA will explain why a different course was taken. Similarly, outside parties remain free to assert that a policy is not appropriate for a specific pesticide or that the circumstances surrounding a specific risk assessment demonstrate that a policy should be abandoned.

EPA has stated in this notice that it will make available revised guidance after consideration of public comment. Public comment is not being solicited for the purpose of converting any policy document into a binding rule. EPA will not be codifying this policy in the Code of Federal Regulations. EPA is soliciting public comment so that it can make fully informed decisions regarding the content of each guidance document.

The ''revised'' guidance will not be unalterable. Once a ''revised'' guidance document is issued, EPA will continue to treat it as guidance, not a rule. Accordingly, on a case-by-case basis EPA will decide whether it is appropriate to depart from the guidance or to modify the overall approach in the guidance. In the course of inviting comment on each guidance document, EPA would welcome comments that specifically address how a guidance document can be structured so that it provides meaningful guidance without imposing binding requirements.

VI. Contents of Docket

Documents that are referenced in this notice will be inserted in the docket under the docket control number ''OPP–00600.'' In addition, the documents referenced in the framework notice, which published in the **Federal Register** on October 29, 1998 (63 FR 58038), have also been inserted in the docket under docket control number OPP–00557.

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, pesticides and pests.

Dated: May 12, 1999.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 99–13034 Filed 5–25–99; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL HOUSING FINANCE BOARD

Sunshine Act Meeting; Announcing an Open Meeting of the Board

TIME AND DATE: 10:00 a.m., May 28, 1999.

PLACE: Board Room, Second Floor, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

STATUS: The entire meeting will be open to the public.

Matters To Be Considered During Portions Open to the Public

- Discussion: Financial Management and Mission Achievement
- Resolution Waiving Leverage Limits for Y2K
- Final Rule: Establishment of Procedures that govern applications for Approvals or Waivers, Request for No-Action Letters or Regulatory Interpretations, and Petitions for case-by-case Determination or Review of Disputed Supervisory Determinations.

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Secretary to the Board, (202) 408–2837.

William W. Ginsberg,

Managing Director.

[FR Doc. 99–13482 Filed 5–24–99; 8:45 am]

BILLING CODE 6725–01–P

GENERAL SERVICES ADMINISTRATION

President's Commission on the Celebration of Women in American History

AGENCY: General Services Administration.

ACTION: Meeting notice cancellation.

SUMMARY: Notice of meeting cancellation is hereby given to the President's Commission on the Celebration of Women in American History regarding open meeting that was rescheduled from 12 p.m. to 5 p.m. on May 27 or 28, 1999, at the Kennedy Space Center (KSC), Florida, Visitor Complex, Center for Space Education, Pad-A. The notice of the meeting was published in the **Federal Register** on May 20, 1999 at 64 FR 27558.

The meeting will be rescheduled in June. Members will be notified of the date and time.

FOR FURTHER INFORMATION CONTACT: Martha Davis (202) 501–0705. Assistant to the Associate Administrator for Communications, General Services Administration, you may also send inquires to martha.davis@gsa.gov.

Dated: May 20, 1999.

Beth W. Newburger,

Associate Administration for Communications.

[FR Doc. 99–13334 Filed 5–25–99; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities: Proposed Collections; Comment Request

The Department of Health and Human Services, Office of the Secretary will periodically publish summaries of proposed information collections projects and solicit public comments in compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995. To request more information on the project or to obtain a copy of the information collection plans and instruments, call the OS Reports clearance Officer on (202) 690–6207.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

1. HHS Acquisition Regulations—HHSAR Part 342—Contract Administration—Extension no change—0990–0131—HHSAR 342.7103 requires reporting information when a cost overrun is anticipated. The information is used to determine if a proposed overrun is reasonable—Respondents—State or local governments, Business or other for-profit, non-profit institutions, small businesses. Annual number of Responses: 45; Average burden per response: 20 hours; Total burden: 900 hours.

2. HHS Acquisition Regulation—HHSAR Part 333—Disputes and Appeals—Extension no change—0990–0133—The Litigation and Claims clause is needed to inform the government of actions filed against government contracts—Respondents: State or local governments, Business or other for-profit, non-profit institutions, small businesses. Annual number of Responses: 100; Average burden per response: 30 minutes; Total burden: 50 hours.

3. HHS Acquisition Regulation—HHSAR Part 332—Contract Financing—Extension no change—0990–0134—The requirements of HHSAR Part 332 are needed to ascertain costs associated with certain contracts so as to timely pay contractor. Respondents: State or local governments, small businesses—Burden Information for Cost Sharing Clause—Number of Respondents: 24; Annual Number of Responses per Respondent: 10; Average Burden per Response: one hour; Annual Burden: 240 hours—Burden Information for Letter of Credit Clause—Number of Respondents: 268; Annual Number of Responses: 4; Burden per Response: 1 hour; Estimated Annual Burden: 1072 hours—Total Burden: 1,312 hours.

4. HHS Acquisition Regulation—HHSAR Part 324—Protection of Privacy and Freedom of Information—Extension no change—0990–0136—The confidentiality of Information requirements are needed to prevent improper disclosure of confidential data. Respondents: State or local governments, Business of other for-profit, non-profit institutions, small businesses; Annual Number of Responses: 449; Average Burden per Response: 8 hours; Estimated Burden: 3,592 hours.

5. HHS Acquisition Regulation—HHSAR Part 316—Types of Contracts—Extension no change—0990–0138—The Negotiated Overhead Rate—Fixed clause is needed since fixed rates are authorized by OMB Circular and a clause is not provided in the Federal Acquisition Regulation (FAR). Respondents: non-profit institutions; Annual Number of Responses: 376; Average Burden per Response: 10 hours; Estimated Burden: 3.760 hours.

Send comments to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue S.W., Washington DC, 20201. Written comments should be received within 60 days of this notice.

Dated: May 17, 1999.

Dennis P. Williams,

Deputy Assistant Secretary, Budget.

[FR Doc. 99–13346 Filed 5–25–99; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control And Prevention

[INFO–99–19]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) is providing opportunity for public comment on proposed data collection projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written

comments should be received with 60 days of this notice.

Proposed Project

1. Evaluation of Provider Adherence to CDC STD Treatment Guidelines in Two Managed Care Plans—New

The National Center for HIV, STD, and TB Prevention (NCHSTP) is proposing a pilot survey of 1,000 practitioners in two managed care plans to evaluate how CDC's most recent edition (1998) of the Sexually Transmitted Disease (STD) Treatment Guidelines influence practice. The pilot survey will be conducted in two large, mixed model managed care plans which are located in two different geographic regions of the U.S. The survey is expected to last from 3–6 months. The CDC periodically publishes national guidelines on the diagnosis and treatment of sexually transmitted diseases; however, little is known about the impact of the guidelines on clinical practice and treatment choices, the practical use of the guidelines, or utility to providers. Data gathered from this study will provide preliminary information about the extent to which providers are aware of the guidelines, their access to the guidelines, their use of the guidelines, and factors that enable or preclude use of the guidelines. The information will assist CDC in determining ways to improve practitioners' understanding and promote utilization of the guidelines; determine ways to make them more available for medical practitioners; and increase the use of the guidelines in appropriate medical practices. The total annual cost to respondents is estimated to be $21,146, assuming an average salary of $ 63.31 per hour.

Respondents	Number of respondents	Number of responses/respondent	Avg. burden/response (in hrs.)
Family core (adult family member)	42,000	1	.35
Adult Core (sample adult)	42,000	1	.35
Child Core (adult family member)	18,000	1	.25
Cancer Module (sample adult)	42,000	1	.333

Dated: May 20, 1999.

Charles Gollmar,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–13329 Filed 5–25–99; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–12–99]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project

1. 2000 National Health Interview Survey, Basic Module (0920–0214)—Revision—The National Center for Health Statistics (NCHS). The annual National Health Interview Survey (NHIS) is a basic source of general statistics on the health of the U.S. population. Due to the integration of health surveys in the Department of Health and Human Services, the NHIS also has become the sampling frame and first stage of data collection for other major surveys, including the Medical Expenditure Panel Survey, the National Survey of Family Growth, and the National Health and Nutrition Examination Survey. By linking to the NHIS, the analysis potential of these surveys increases. The NHIS has long been used by government, university, and private researchers to evaluate both general health and specific issues, such as cancer, AIDS, and childhood immunizations. Journalists use its data to inform the general public. It will continue to be a leading source of data for the Congressionally-mandated ''Health US'' and related publications, as well as the single most important source of statistics to track progress toward the National Health Promotion and Disease Prevention Objectives, ''Healthy People 2000.''

Because of survey integration and changes in the health and health care of the U.S. population, demands on the NHIS have changed and increased, leading to a major redesign of the annual core questionnaire, or Basic Module, and a redesign of the data collection system from paper questionnaires to computer assisted personal interviews (CAPI). Those redesigned elements were implemented in 1997 and are expected to be in the field until 2006. Ad hoc Topical Modules on various health issues are provided for in the redesigned NHIS. This clearance is for the fourth full year of data collection, planned for January-December 2000. The Basic Module on CAPI will result in publication of new national estimates of health statistics, release of public use micro data files, and a sampling frame for other integrated surveys. It will also include a ''Topical Module'' (or supplement) on Cancer. The cancer module will repeat similar surveys conducted in 1987 and 1992, and will help track many of the Healthy People 2000 Objectives for cancer. The total annual burden hours are 47,900.

Respondents	Numbers of Respondents	Numbers of Responses/Respondent	Avg. Burden/Response (in hrs.)
Family Core (adult family member)	42,000	1	.35
Adult Core (sample adult)	42,000	1	.35
Child Core (adult family member)	18,000	1	.25
Cancer Module (sample adult)	42,000	1	.333

Dated: May 20, 1999.

Charles Golmar,

Acting Associate Director for Policy, Planning and Evaluation Centers for Disease Control and Prevention (CDC)

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 99133]

Cooperative Agreement for a Coordinated Community Response To Prevent Intimate Partner Violence; Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1999 funds for a cooperative agreement program for a Coordinated Community Response (CCR) to Prevent Intimate Partner Violence. This program addresses the ''Healthy People 2000'' priority area of Violent and Abusive Behavior.

The purposes of this program are to:

1. Enhance community coalitions and coordinated community responses for addressing intimate partner violence;

2. Establish or enhance community programs directed at the primary prevention of intimate partner violence and their families;

3. Enhance services for victims of intimate partner violence and their families; and

4. Evaluate the process and impact of the coordinated community response on addressing, and potentially reducing, intimate partner violence.

B. Eligible Applicants

Assistance will be provided only to non-profit community-based organizations focusing on the prevention of intimate partner violence in towns, cities, and rural America.

Competition is limited to non-profit community-based organizations because of the Legislative Authority (See Section I). Furthermore, the Congressional and Family and Intimate Violence Prevention Subcommittee intent is to support funding for non-profit community-based organizations.

Note: Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds

Approximately $2.7 million is available in FY 1999 to fund approximately 6 awards. It is expected that the average award will be $450,000, ranging from $400,000 to $600,000. It is expected that the awards will begin on or about September 30, 1999, and will be made for a 12-month budget period within a project period of up to three years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Use of Funds

1. *Allowable Use of Funds.* Funds may be used for planning, developing, implementing, and evaluating projects. Accordingly, funds can be used to support personnel, purchase hardware and software required to implement the project. Applicants may enter into contractual agreements to purchase goods and services, or to support collaborative activities, but the applicant must retain proper stewardship over funds and responsibility for tasks associated with the project.

2. *Prohibited Uses of Funds.* Cooperative agreement funds for this project cannot be used for construction, renovation, the lease of passenger vehicles, the development of major software applications, or supplanting current applicant expenditures.

3. *Budget.* The budget should include cost for travel for the project manager and evaluator or lead evaluator (if part of an evaluation team) to attend at least 2 meetings in Atlanta with CDC staff in the first year of the program.

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. (Recipient Activities), and CDC will be responsible for the activities listed under 2. (CDC Activities).

1. Recipient Activities

a. Enhance existing coordinated efforts through an established coalition to prevent intimate partner violence (IPV) with integrated prevention, and intervention programs and services.

b. Identify and select a comparison community without an established community coalition that meets demographic requirements.

c. Develop and implement an evaluation plan for cross site analyses that includes a comparison of pre- and post-intervention activities such as incidence and prevalence of IPV, increase in programs and services, increased knowledge among coalition members, agency members, community members, etc. in the applicant community and the comparison community.

d. Participate with other funded cooperative agreement recipients in revising and utilizing previously developed cross-site instruments to be administered at approved intervals.

e. Analyze data and interpret findings.

f. Compile and disseminate project results.

g. Collaborate with and participate in workgroups that include all funded projects.

h. Distribute data for analysis and joint evaluation.

2. CDC Activities

a. Provide technical assistance and consultation.

b. Collaborate in the design of all phases of the evaluation.

c. Facilitate collaborative efforts to compile and disseminate program results through presentations and publications.

d. Assist in the transfer of information and methods developed in these projects to other comparable intimate partner violence prevention and intervention programs.

e. Assist in the development of research protocol for Institutional Review Board (IRB) review by all cooperating institutions participating in the research project. The CDC IRB will review and approve the protocol initially and on at least an annual basis until the research project is completed.

E. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 40 pages, excluding the abstract, budget, justification, and attachments (i.e., letters of support, data collection forms, resume, etc.) All materials must be typewritten, double-spaced with type NO SMALLER THAN 12 CPI, on 8.5″ × 11″ paper, with at least 1'' margins, headings and footers, unbound, and printed on one side only. Do not include any pamphlets, spiral or bound materials.

1. Abstract

A one page double-spaced abstract and summary of the proposed efforts to enhance and evaluate a coordinated community response to prevent intimate

partner violence outlining the goals and objectives, working partners and collaborators, resources to be provided, the desired outcomes, and program evaluation plan.

2. Background and Need

a. The applicant should provide clear evidence of the existence of an established community coalition in the applicant community to prevent intimate partner violence (See Addendum 2 for definition of Established Community Coalition). Include amount of time coalition has been in existence; coalition membership and leadership; coalition goals and objectives/mission statement; coalition members' roles and responsibilities; primary prevention activities undertaken by the coalition; and enhanced services and interventions in the community facilitated by the coalition. In addition, the applicant should include demographics, incidence of intimate partner violence and associated injury and death, and patterns of injury in the description.

b. The applicant should describe current coalition activities, coalition achievements, and results of previous coalition evaluation activities. In addition, the applicant should describe how funding under this program announcement will enhance and strengthen the coordination of community programs and enhance and broaden existing services and coordinated community responses directed at the prevention of intimate partner violence.

c. The applicant should provide clear evidence of access to a comparison community (See Addendum 2 for definition of Comparison Community). Include demographics, incidence of intimate partner violence and associated injury and death, and patterns of injury in the description.

3. Goals and Objectives

a. The goals and objectives should be specific, time-phased, measurable, and achievable. Objectives should reflect an enhancement or expansion of existing prevention programs and services.

b. The applicant should clearly describe short-term (year 1) objectives and long-term (years 2–3) objectives related to the program plan.

4. Plan of Operation

a. The applicant should provide evidence that both the applicant and the community coalition participants have access to both the target population(s)in the applicant community and the comparison community for implementing the proposed plan.

b. The applicant should clearly describe how the structure of the coalition and its subcommittees (if applicable) and the specific activities and interventions within the program plan will help achieve each of the program objectives.

c. The applicant should clearly describe the primary prevention programs and services that are proposed for achieving each of the program objectives and specify how these activities represent an enhancement or expansion of ongoing intimate partner violence primary prevention programs and services. This description should include a discussion of the mechanisms for linking primary prevention programs and services, where appropriate, and assurances of participants' access to all primary prevention program and service components or other means by which proposed primary prevention programs and services (new or existing) are to be incorporated into the project.

d. The applicant should provide a time-line indicating when activities will occur and who will be responsible for implementing the activity. Include an organizational chart for the IPV coalition as well as a chart that clearly delineates the proposed coordination plan.

e. The applicant should include a detailed description of the procedures that makes the applicant compliant with CDC's Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. The applicant's procedures should include:

(1) A proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

(2) The proposed justification when representation is limited or absent.

(3) A statement as to whether the design of the study is adequate to measure differences when warranted.

(4) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

5. Project Management and Staffing

a. The applicant should provide a description of key staff, their qualifications and experience, level of effort, and the role each person will play in carrying out the activities outlined in the application. Include in the description the proposed staffing for the project, noting existing staff as well as additional staffing needs.

b. The applicant should ensure that project personnel reflect the racial and ethnic composition of the target populations. The applicant should provide resumes, curriculum vitae, or position descriptions of key staff as an appendix.

c. The applicant should include, at a minimum, a full-time program manager with a direct line of authority to the Executive Director and a full-time equivalent evaluator or evaluation team with appropriate experience.

d. The applicant should describe plans to train and support staff, and the availability of staff and facilities to carry out the program plan.

6. Collaboration

a. The applicant should describe current and proposed collaborations. This description should include the name(s)and types of organization (e.g., youth agencies, community-based organization, minority organization, etc.),the nature of the collaborations, and letters of commitment.

b. The applicant should describe coalition participants' previous or current experience in managing and delivering intimate partner violence programs at the community level.

7. Evaluation Plan

a. The applicant should provide a detailed description of the proposed evaluation plan to document program progress and how the proposed plan will measure success in meeting specific objectives.

b. The applicant should document staff availability, expertise, experience, and capacity to perform the evaluation.

c. The applicant should provide evidence of and demonstrate a willingness to participate in cross-site evaluation of all projects.

d. The applicant should identify, select, and guarantee the participation of a comparison community.

e. The applicant should include a plan for reporting evaluation results and using evaluation information for programmatic decisions. The applicant should provide evidence of and indicate a willingness to participate in a process of continuous improvement which may require frequent reviews of progress and processes utilized, remediation of identified barriers, and adoption of modified methods and measures.

8. Proposed Budget

The applicant must provide a detailed first-year budget with accompanying narrative justifying all individual budget items which make up the total amount of funds requested. The budget request should be reasonable and consistent with the intended use of cooperative agreement funds.

9. Human Subjects

a. The applicant should describe the degree to which human subjects may be at risk and what protections will be in place to assure protection and confidentiality.

b. The applicant should demonstrate that it has adequately addressed the requirements of Title 45 CFR Part 46 for the protection of human subjects.

F. Submission and Deadline

Submit the original and two copies of PHS 5161–1 (OMB Number 0937–0189). Forms are in the application kit.

On or before July 28, 1999, submit the application to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

1. Deadline

Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date; or

b. Sent on or before the deadline date and received in time for orderly processing. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. Late Applications

Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant.

G. Evaluation Criteria

Each application will be evaluated individually against the following criteria by a special emphasis panel (SEP) appointed by CDC.

1. Background and Need (30 points)

a. The extent to which the applicant provides evidence of an established coalition to coordinate community response to intimate partner violence prevention and intervention activities.

b. The extent to which the applicant provides a demographic description of the applicant community and the comparison community.

c. The extent to which the applicant provides evidence of the incidence of intimate partner violence and associated injury and death among women, children, and families in both the applicant community and the comparison community.

d. The extent to which the applicant provides information on the patterns of injuries resulting from intimate partner violence in both the applicant community and the comparison community.

e. The extent to which the applicant describes the present availability of intimate partner violence primary prevention programs and services as well as existing gaps both in the applicant community and the comparison community.

f. The extent to which the applicant indicates knowledge of other providers and researchers engaged in intimate partner violence prevention projects both in the applicant community and the comparison community.

g. The extent to which the applicant provides evidence of previous coalition evaluation activities.

h. The extent to which the applicant describes in detail how this program will (a) enhance and strengthen the coordination of community programs in preventing intimate partner violence; and (b) enhance and broaden existing services and coordinated community responses directed at the prevention of intimate partner violence.

2. Goals and Objectives (10 points)

a. The extent to which the applicant can clearly state specific program goals, as well as short-term (year 1) objectives and longer-term (years 2–3) objectives related to the program plan.

b. The extent to which the applicant's goals and objectives are time-phased, specific, measurable, and achievable.

3. Plan of Operation (15 points)

a. The extent to which the applicant provides evidence that the applicant and the community coalition participants have access to the target population(s) for implementing the proposed program in the applicant community and the comparison community.

b. The extent to which the applicant includes a program planning time-line indicating when each activity will occur, who will do what to implement the activity, and describes realistic activities for producing the desired results.

c. The extent to which the applicant describes proposed collaborations with appropriate government agencies, universities, health agencies, youth agencies, community-based organizations, minority organizations, researchers working with the specified target population(s), and victim advocacy organizations.

d. The extent to which the applicant describes how the structure of the coalition and its subcommittees (if applicable) and the specific activities and interventions within the program plan will help achieve each of the program objectives described in the Goals and Objectives Section.

e. The extent to which the applicant describes the coalition planning process including explicit commitment to provide services and resources, mechanisms for communication both among coalition members and between the coalition and the applicant community.

f. The extent to which the applicant describes the applicant's and coalition participants' previous or current experience in managing and delivering intimate partner violence programs at the community level.

g. The extent to which the applicant describes the primary prevention programs and services that are proposed for achieving each of the program objectives and specifies how these activities represent an enhancement or expansion of ongoing intimate partner violence primary prevention programs and services.

4. Project Management and Staffing (10 points)

a. The extent to which the applicant describes the proposed staffing for the project, noting existing staff as well as additional staffing needs.

b. The extent to which the applicant describes the responsibilities of individual staff members including the level of effort and allocation of time for each project activity by staff position.

c. The extent to which the applicant describes plans to train and support staff, and the availability of staff and facilities to carry out the program plan.

d. The extent to which the applicant provides curriculum vitae or position descriptions for each staff member and commitment of time to program activities.

e. The extent to which the applicant provides an organizational chart of the applicant's organization and includes a chart of the proposed coordination plan.

f. The extent to which the applicant provides evidence of project involvement of personnel who reflect the racial and ethnic composition of the applicant community and comparison community.

5. Collaboration (10 points)

The extent to which the applicant describes current coalition activities including (1) names and affiliations of the persons serving on the coalition, (2) letters of commitment from the organizations whose members are serving on the coalition including the precise nature of past and proposed collaborations, the products, services, and other activities that will be

provided by and to the applicant through the collaboration on the project.

6. Evaluation Plan (25 points)

a. The extent to which the applicant assess how adding resources to an established community coalition to prevent intimate partner violence enhances coalition activities and coordination among primary prevention programs and services and, potentially reduces the incidence of intimate partner violence.

b. The extent to which the applicant assess the impact of a coordinated community response to prevent intimate partner violence in the applicant community as compared to a community lacking this coordinated community response.

c. The extent to which the applicant provides evidence of the selection and the participation of a comparison community (see Addendum 2 for a definition of a Comparison Community).

d. The extent to which the applicant describes how previously developed cross-site core instruments will be administered.

e. The extent to which the applicant describes site-specific program evaluations that fit with overall program goals and objectives.

f. The extent to which the applicant demonstrates its capability to implement these program evaluation components.

7. Proposed Budget (Not scored)

The extent to which the budget request (budget and narrative) is clearly explained, adequately justified, reasonable, sufficient for the proposed project activities, and consistent with the intended use of the cooperative agreement funds.

8. Human Subjects (Not scored)

The extent to which procedures for the protection of human subjects are described and adequately address the requirements of the Department of Health and Human Resources (45 CFR 46) for the protection of human subjects.

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of :

1. progress reports (semi-annually);

2. financial status report, no more than 90 days after the end of the budget period; and

3. final financial status and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Addendum 1 in the application package.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–7 Executive Order 12372 Review
AR–8 Public Health System Reporting Requirements
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2000
AR–12 Lobbying Restrictions
AR–13 Prohibition on Use of CDC Funds for Certain Gun Control Activities
AR–14 Accounting System Requirements
AR–15 Proof of Non-Profit Status

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under sections 301(a), 317(k)(2), and 391–394 of the Public Health Service Act, [42 U.S.C. 241(a),247b(k)(2), and 280b-280b-2, as amended. The Catalog of Federal Domestic Assistance number is 93.136.

J. Where To Obtain Additional Information

This and all other CDC Announcements may be found and downloaded from the CDC homepage. Internet address: http://www.cdc.gov (click on funding).

To receive additional written information and to request an application kit, call 1–888-Grants (1–888–472–6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of interest.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Ricky Willis, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 99133, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Suite 3000, Mailstop E–13, Atlanta, GA 30341–4146, Telephone (770) 488–2719, E-mail address: RQW0@cdc.gov

For program technical assistance contact: Pamela Gruduah, Project Officer, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, N.E., Mailstop K–60, Atlanta, GA 30341, Telephone: (770) 488–1390, E-mail Addresses: PYB1@cdc.gov

Dated: May 20, 1999.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 99134]

Cooperative Agreement for Surveillance of Intimate Partner Violence; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1999 funds for a cooperative agreement program for Surveillance of Intimate Partner Violence (IPV). This program addresses the ''Healthy People 2000'' priority area of Violent and Abusive Behavior. The purpose of the program is to develop IPV population-based surveillance systems that will help determine the magnitude of the IPV problem in population subgroups, and test its usefulness by comparing resulting data with data from self-report surveys.

B. Eligible Applicants

Assistance will be provided only to the health departments of States or their bona fide agents, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, federally recognized Indian tribal governments, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau. In consultation with States, assistance may be provided to political subdivisions of States.

Massachusetts, Michigan, and Rhode Island, States currently receiving funds under Announcement No. 483, ''State Injury Intervention Programs,'' are not eligible to apply for this announcement.

C. Availability of Funds

Approximately $600,000 is available in FY 1999 to fund approximately two awards. It is expected that the average award will be $300,000. Ranging from

$250,000 to $300,000. It is expected that the awards will begin on or about September 30, 1999, and will be made for a 12-month budget period within a project period of up to five years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

D. Funding Preferences

Preference will be given to those applicants that have jurisdiction over urban areas with a population equal or more than one million. A population of one million or more will provide a large sample size that will allow generalization of the design and methodology of developed IPV Surveillance Systems.

E. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. (Recipient Activities), and CDC will be responsible for the activities listed under 2. (CDC Activities).

1. Recipient Activities

a. Develop or enhance existing injury surveillance activities to support IPV surveillance to identify victims and occurrences of IPV, including data describing the magnitude of the problem and the extent of injuries (i.e., who is affected, areas and persons at greatest risk, and the type and source of the information used).

b. Establish a surveillance system, or enhance an existing surveillance system, capable of linking with one or more health-related data sources to determine intimate partner violence incidence and prevalence in the targeted area (e.g., linkage of emergency departments or hospital discharge data with mental health data).

c. Enhance the capacity of the applicant for general injury surveillance by incorporating the IPV surveillance system with other existing injury surveillance systems.

d. Design, develop, and implement a health-related surveillance system to measure intimate partner violence and field test CDC's Uniform Definitions and Recommended Data Elements for IPV Surveillance if no surveillance system is in place, or expand currently existing surveillance system to incorporate health-related data and field test the CDC's Uniform Definitions and Recommended Data Elements for IPV Surveillance.

e. Design, develop and conduct a self-report survey using the same population where the surveillance activities will be conducted.

f. Establish and maintain cooperative partnerships with key personnel of potential data source agencies (e.g., hospitals, emergency departments, etc.).

g. Monitor quality, representativeness and completeness of surveillance data.

h. Collect and analyze surveillance data.

i. Produce and distribute periodic progress reports and data summaries to appropriate state and local agencies and, develop replication guidelines for future use by other states and localities.

j. Establish an advisory committee to exchange information and increase the likelihood of integrated injury surveillance systems.

2. CDC Activities

a. Provide technical assistance in the design of all phases of the IPV surveillance programs, including consultation on data collection instruments and procedures.

b. Provide technical assistance in developing a standardized approach to surveillance and evaluation activities between and among each of the project areas.

c. Provide consultation and assistance in problem assessment and target population identification, the evaluation of coverage, cost, and impact of surveillance activities, and design of scientific protocols.

d. Provide consultation on survey designs and IPV surveillance systems for State implementation.

e. Collaborate in the analysis and dissemination of IPV surveillance data.

f. Provide up-to-date scientific information about intimate partner violence and coordinate related activities at CDC's National Center for Injury Prevention and Control.

g. Assist in the transfer of information and methods developed in this program to other geographical areas.

h. Assist in the development of a research protocol for IRB review by all cooperating institutions participating in the research project. The CDC IRB will review and approve the protocol initially and on at least an annual basis until the research project is completed.

F. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 45 double-spaced pages, printed on one side, with one inch margins, and unreduced font.

1. Abstract

A one double-spaced page abstract and summary of the proposed intimate partner violence surveillance system and self-report survey is required.

2. Background and Need

a. The applicant should describe and document the magnitude of the intimate partner violence problem in the applicant's targeted area, and provide a profile of the persons and groups at greatest risk.

b. The applicant should include a description of its current activities and previous experiences in intimate partner violence surveillance, evaluation, and coordination with other agencies and potential partners.

c. The applicant should include an assessment of existing injury surveillance capacity.

d. All information described in this section must be referenced.

3. Goals

a. The applicant should include specific goals which indicate where the applicant anticipates its intimate partner violence surveillance program will be at the end of the five year project period.

b. The applicant should include a description of and evidence of its willingness and ability to undertake related projects should additional funds become available.

4. Objectives

a. The applicant should include specific time-phased, measurable, and achievable objectives during the first budget period.

b. The applicant's objectives should relate directly to the project goals, and include, but not be limited to, use of various health-related information sources, effort to achieve representativeness, surveillance system evaluation, collaboration, and demonstrate the utility of the surveillance system and self-report survey in replication efforts.

5. Methodology

a. The applicant should also include a detailed description of specific activities that are proposed to achieve each of the program objectives during the budget period. Activities should also include design, development, and administration of a self-report survey for the same population where the surveillance is conducted. Activities should also include how often the self-report survey will be conducted and how will the survey be incorporated as an integral part of the IPV Surveillance System.

b. The applicant should include a detailed time-line which indicates when each activity and preparations for activities will occur. For each activity, describe who will do what to implement the activities. Specifically provide a description of potential data sources, how these will be accessed, and how some may be linked. If other units or organizations will collaborate, describe the role of the unit or organization, who will be responsible for the designated activities, and explicitly explain how these organizations will deal with privacy and confidentiality issues (e.g., encryption, security, etc.). Document concurrences with this plan by other units or organizations that are collaborating with the applicant.

c. The applicant should include an organization chart identifying placement of the intimate partner violence surveillance program within organizational units with existing jurisdiction and authority over other injury surveillance systems. The organization chart should also include collaborating components and their relationship to the intimate partner violence surveillance program.

d. The applicant should include a detailed description of the procedures that makes the applicant compliant with CDC's Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. The applicant's procedures should include:

(1) A proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

(2) The proposed justification when representation is limited or absent.

(3) A statement as to whether the design of the study is adequate to measure differences when warranted.

(4) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

6. Evaluation Plan

a. The applicant should include a detailed description of the methods and design to be used to evaluate the IPV surveillance system, including what will be evaluated, data to be used, who will perform the evaluation and the time it will take (timeline) to do the evaluation. Specifically address the sensitivity, usefulness, simplicity, flexibility, acceptability, timeliness, representativeness, predictive value positive, and cost.

b. The applicant should document staff availability, expertise, and capacity to evaluate surveillance activities. The evaluation should include development of tools and data set structures that will enable the IPV surveillance system, design of self-report survey instruments, and other relevant activities such as, training of hospital staff to identify and collect IPV data, and evaluation of software applications and computer equipment. The evaluation should also include progress in meeting the objectives and conducting activities during the budget and project periods.

7. Coordination and Collaboration

a. The applicant should include a description of the relationship between the program and other organizations, agencies, and health department units that will relate to the program, or which conduct related activities. Include composition and roles of any state and/or local coalitions involved with the applicant in developing the IPV surveillance system and self-report survey; specific commitments of support to provide staff, equipment, space, time, etc.

b. The applicant should include a description of any proposed collaboration with academic institutions, public safety officials, or with other agencies should be included. In addition, a description of the responsibilities and composition of the surveillance advisory committee should be included in this section.

8. Project Management and Staffing

a. The applicant should include a description of the roles and responsibilities of the project director, epidemiologist, and each staff member, including a description of staff with appreciable experience in other injury surveillance systems expected to work in the IPV Surveillance System.

b. The applicant should describe the allocation of staff to the activities described in the Methodology section. Descriptions should include the position titles, education and experience required, and the percentage of time each will devote to the program. In addition, the description should also state the methods the staff will employ to train others to collect and manage IPV data. Curriculum vitae for existing staff should also be included.

c. In an appendix, the applicant should provide a letter from each collaborating consultant or outside agency described in the Methodology section. The letter should state their willingness and ability to fulfill the proposed responsibilities.

9. Budget

The applicant should provide a detailed first budget with accompanying narrative justifying all individual budget items which make up the total amount of funds requested. The budget should be consistent with stated objectives and planned activities.

10. Human Subjects

a. The applicant should describe the degree to which human subjects may be at risk and what protections will be in place to assure protections and confidentiality.

b. The applicant should demonstrate that it has adequately addressed the requirements of Title 45 CFR Part 46 for the protection of human subjects.

G. Submission and Deadline

Submit the original and two copies of PHS 5161–1 (OMB Number 0937–0189). Forms are in the application kit.

On or before July 19, 1999, submit the application to the Grants Management Specialist identified in the ''Where To Obtain Additional Information'' section of this announcement.

1. Deadline

Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for orderly processing. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. Late Applications

Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant.

H. Evaluation Criteria

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. Background and Need (10 points)

a. The extent to which the applicant documents the magnitude of the intimate partner violence problem in the applicant's targeted area, and provides a profile of the persons and groups at greatest risk.

b. The extent to which the applicant documents its current activities and previous experiences in intimate partner violence surveillance, evaluation, and coordination with other agencies and potential partners.

c. The extent to which the applicant has made a complete assessment of existing injury surveillance capacity.

2. Goals (15 points)

a. The extent to which the applicant states specific goals that indicate where the applicant anticipates its intimate partner violence surveillance program will be at the end of the five year project period.

b. The extent to which the applicant describes and provides evidence of its willingness and ability to undertake related projects should additional funds become available.

3. Objectives (15 points)

a. The extent to which the applicant states specific, time-phased, measurable and achievable objectives.

b. The extent to which the applicant relates the objectives directly to the project goals and the use of various health-related information sources, effort to achieve representativeness, surveillance system evaluation, collaboration, and demonstrates the utility of the surveillance system and self-report survey in replication efforts.

4. Methodology (15 points)

a. The extent to which the applicant describes specific activities that are proposed to achieve each of the program objectives during the budget period.

b. The extent to which the applicant provides a time-line which indicates when each activity and preparations for activities will occur.

c. The extent to which the applicant provides evidence of an organizational chart that represents the actual structure of the proposed IPV surveillance operating organization and its placement in organizational units with existing jurisdiction and authority over other injury surveillance systems.

d. The extent to which the applicant provides evidence it has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research.

5. Evaluation Plan (15 points)

a. The extent to which the applicant describes the methods and design to be used to evaluate the IPV surveillance system, including what will be evaluated, data to be used, who will perform the evaluation and the time it will take (timeline) to do the evaluation.

b. The extent to which the applicant provides evidence of staff availability, expertise, and capacity to evaluate surveillance activities.

6. Coordination and Collaboration (15 points)

a. The extent to which the applicant describes the relationship between the program and other organizations, agencies, and health department units that will relate to the program or which conduct related activities.

b. The extent to which applicant provides evidence of collaboration with academic institutions, public safety officials, or with other agencies. In addition, the extent to which the applicant describes responsibilities and composition of the surveillance advisory committee.

7. Project Management and Staffing (15 points)

a. The extent to which the applicant documents the experience in the management of intimate partner violence surveillance, and describes the roles and responsibilities of the project director, epidemiologist, and each staff member, including a description of staff with appreciable experience in other injury surveillance systems expected to work in the IPV Surveillance System.

b. The extent to which the applicant includes letters in the appendix from each collaborating consultant or outside agency stating their willingness and ability to fulfill the proposed responsibilities.

8. Budget (Not scored)

The extent to which the budget request is clearly explained, adequately justified, reasonable, sufficient, and consistent with the stated objectives and planned activities.

9. Human Subjects (Not scored)

a. The extent to which the applicant describes the degree to which human subjects may be at risk.

b. The extent to which the applicant provides assurances that all activities will conform to the requirements of 45 CFR, part 46.

I. Other Requirements

Technical Reporting Requirements:

Provide CDC with original plus two copies of

1. Progress reports (semiannual);

2. Financial status report, no more than 90 days after the end of the budget period; and

3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Addendum in the application package.

AR–1 Human Subjects Requirements

AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research

AR–7 Executive Order 12372 Review

AR–9 Paperwork Reduction Act Requirements

AR–10 Smoke-Free Workplace Requirements

AR–11 Healthy People 2000

AR–12 Lobbying Restrictions

AR–13 Prohibition on Use of CDC Funds for Certain Gun Control Activities

J. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under sections 301, 317k(2), and 391–394 of the Public Health Service Act, [42 U.S.C. 241, 247b(k)(2), and 280–280b-2], as amended. The Catalog of Federal Domestic Assistance number is 93.136.

K. Where To Obtain Additional Information

This and all other CDC Announcements may be found and downloaded from the CDC homepage. Internet address: http://www.cdc.gov (click on funding).

To receive additional written information and to request an application kit, call 1–888–GRANTS4 (1–888–472–6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of Interest.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from:

Ricky Willis, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 99134, Centers for Disease Control and Prevention, 2920 Brandywine Road, Suite 3000, Mailstop E–13, Atlanta, GA 30341–4146, Telephone: (770) 488–2719, E-mail address: rqw0@cdc.gov

For program technical assistance contact: Enrique Nieves, Project Officer, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention, 4770 Buford Highway, N.E., Mailstop K–63, Atlanta, GA 30341, Telephone: (770) 488–1281, E-mail address: exn2@cdc.gov

Dated: May 20, 1999.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–13332 Filed 5–25–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 99150]

National Institute for Occupational Safety and Health; Intervention Effectiveness; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1999 funds for a cooperative agreement program for support to accomplish research in the National Occupational Research Agenda (NORA) Priority area of intervention effectiveness. This program addresses the ''Healthy People 2000'' priority area(s) of Occupational Safety and Health. The purpose of the program is to provide support to eligible applicants to develop intervention strategies, and/or assess the effectiveness of intervention techniques in reducing or preventing workplace injuries and illnesses.

B. Eligible Applicants

Applications may be submitted by public and private nonprofit and for-profit organizations and by governments and their agencies; that is, universities, colleges, research institutions, hospitals, other public and private nonprofit and for-profit organizations, State and local governments or their bona fide agents, Federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations, and small minority businesses.

Note: Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds

Approximately $350,000 is available in FY 1999 to fund five to seven awards. It is expected that the average award will be $60,000 and will range from $30,000 to $50,000. It is expected that the award will begin on or about September 30, 1999, and will be made for a 12-month budget period within a project period of up to three years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

D. Program Interests

Research applications are sought that focus on the systematic evaluation of the effectiveness of interventions. Of interest are fully-developed interventions which are ready for implementation as well as evaluations of the effectiveness of interventions which have already been implemented. Applications for comparative analyses of the effectiveness of alternate options (e.g., cost-effectiveness) are also solicited. The interventions to be evaluated could be defined at any level of complexity, and range from a regulatory or voluntary occupational safety or health standard to the change of a single, specific work process, control technology, training program, or informational campaign. Encouraged are interdisciplinary projects which include, as appropriate, the fullest complement possible of outcome measures. These measures could include health and safety outcomes (e.g., reductions in injury, disability, stress, or hazard exposure); economic outcomes (e.g, the effect of the intervention on productivity, employee turnover, income, medical, and or societal costs); and/or social outcomes (e.g., social roles and relationships at work and in the family and other aspects of the work-family interface.) These examples of potential health, economic, and social outcome measures are provided only to illustrate the range of outcomes of interest, not to represent an exclusive listing.

Encouraged are applications to evaluate interventions in any industry sector; however, special consideration will be given to applications to evaluate interventions in agriculture, construction, services (especially health care), and mining.

E. Cooperative Activities

In conducting activities to achieve the purpose of this program, the recipient will be responsible for activities under A. (Recipient Activities), and CDC/NIOSH will be responsible for the activities listed under B. (CDC/NIOSH Activities).

A. Recipient Activities

1. Develop and implement a study protocol.

2. Analyze data and interpret findings.

3. Disseminate study results to the occupational safety and health community.

4. Publish study findings.

B. CDC/NIOSH Activities

1. Provide scientific and technical collaboration in the development of the study design, protocol, and data analysis.

2. Assist (if appropriate) in the development of a research protocol for Institutional Review Board (IRB) review by all cooperating institutions participating in the research project. The CDC IRB will review and approve the protocol initially and on at least an annual basis until the research project is completed.

3. Assist awardees on data analysis, and interpretation of findings.

F. Application Content

Use the information in the Cooperative Activities, Other Requirements and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 25 double-spaced pages. The original and each copy of the application must be submitted unstapled and unbound. All materials must be typewritten, double-spaced, with unreduced type (font size 12 point) on 8½″ by 11″ paper, with at least 1″ margins, headers, and footers, and printed on one side only. Do not include any spiral or bound materials or pamphlets. Appendices should have indexes and include: (1) support letters; (2) information on key personnel; and (3) other supporting documentation.

Applications should follow the PHS 398 (Rev. 5/95) application and Errata sheet, and should include the following information:

1. The project's focus that justifies the research needs and describes the scientific basis for the research, the expected outcome, and the relevance of the findings to reduce or prevent workplace injuries and illnesses.

2. Specific, measurable, and time-framed objectives.

3. A detailed plan describing the methods by which the objectives will be achieved and evaluated, including their sequence.

4. A description of the principal investigator's role and responsibilities.

5. A description of all the project staff regardless of their funding source. It should include their title, qualifications, experience, percentage of time each will

devote to the project, as well as that portion of their salary to be paid by the cooperative agreement.

6. A description of those activities related to, but not supported by, the cooperative agreement.

7. A description of the involvement of other entities that will relate to the proposed project, if applicable. It should include commitments of support and a clear statement of their roles.

8. An explanation of how the research findings will contribute to the national effort to reduce or prevent workplace injuries and illnesses.

G. Submission and Deadline

Letter of Intent (LOI)

The letter of intent must be submitted on or before June 11, 1999, to: Sheryl L. Heard, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office Announcement 99150, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, Georgia 30341.

Application

Submit the original and five copies of PHS 398 (OMB Number 0925–0001 and adhere to the instructions on the Errata Instruction sheet for PHS 398). Forms are in the application kit.

On or before July 12, 1999, submit the application to: Sheryl Heard, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office Announcement 99150, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, Georgia 30341.

Deadline: Applications shall be considered as meeting the deadline if they are either:

A. Received on or before the deadline date; or

B. Sent on or before the deadline date and received in time for processing. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications: Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant.

H. Evaluation Criteria

Applications which are complete and responsive will be reviewed and evaluated by an Independent Special Emphasis Panel in accordance with the following criteria:

1. Study Design (40 points)

The extent to which specific research questions and/or hypotheses are described. The extent to which the applicant provides a detailed description of overall design and methods selected for the study. The technical significance and originality of the proposed study. The extent to which appropriateness and adequacy of the study design and methodology proposed to carry out the project. The extent to which the applicant demonstrates that the study population and/or setting can be generalized to other work settings doing similar work.

2. Study Population and Methods (15 points)

(A) The extent to which the proposed study will meet study objectives. The extent to which the applicant describes the study population, including information on the ages and work experiences of the study population. The extent to which the study population and/or setting in which the study or analyses are undertaken are adequate for achieving the desired objectives. The extent to which the applicants demonstrate the ability to address modifying factors that may vary across work sites, such as characteristics of equipment, training and supervision, and job experience of workers.

(B) The extent to which the applicant has met the CDC policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes:

(1) the proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation; including anticipated levels of representation of these groups in the sampling plan; (2) the proposed justification when representation is limited or absent; (3) a statement as to whether the design of the study is adequate to measure differences when warranted; and (4) a statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

3. Goals and Objectives (15 points)

The extent to which the applicant has included goals and objectives that are specific, measurable, time-phased, feasible to be accomplished during the project period, and which address all activities necessary to accomplish the purpose of the application. The extent to which the applicant clearly states the evaluation method for evaluating the accomplishments. The extent to which a qualified plan is proposed that will help achieve the goals stated in the application.

4. Staffing, Facilities and Resources (15 points)

The extent to which job descriptions, proposed staffing, staff qualifications and experience, and curricula vitae for both the proposed and current staff indicate the applicant's ability to carry out the objectives of the program. The extent to which adequacy of the applicant's facilities, equipment, and other resources are available for performance of the project.

5. Collaboration (15 points)

The extent to which concurrence with the applicant's plans by all other involved parties is specific and documented (e.g. support for proposed activities as well as commitment to participate; letters of support and/or memorandum of understanding). The extent to which the partners are clearly described and their qualifications for their component of the proposed work are explicitly stated. The extent to which the applicant demonstrates access to work sites or datasets that are critical to study completion.

6. Budget Justification (Not Scored)

The extent to which the budget is reasonable, clearly justified, and consistent with limited use of funds.

7. Human Subjects (Not Scored)

If human subjects will be involved, the extent to which the applicant describes how they will be protected, i.e., describe the review process which will govern human subjects.

I. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of

1. annual progress reports;

2. financial status report, no more than 90 days after the end of the budget period; and

3. final financial status and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I (included in the application package).

AR–1 Human Subjects Requirements

AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research

AR–9 Paperwork Reduction Act Requirements

AR–10 Smoke-Free Workplace Requirements

AR–11 Healthy People 2000

AR–12 Lobbying Restrictions

J. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 20(a) and 22(c)(7) of the Occupational Safety and Health Act of 1970, [29 U.S.C. 669(a) and 671(e)(7)]. The Catalog of Federal Domestic Assistance number is 93.283.

K. Where To Obtain Additional Information

The application kit for program announcement 99150 can be downloaded from the CDC home page on the Internet: http://www.cdc.gov. (Click on Funding)

Please refer to Program Announcement 99150 when you request information. To receive additional written information and to request an application kit, call 1–888–GRANTS4 (1–888 472–6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of interest.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Sheryl Heard, Grants Management Specialist, Procurement and Grants Office Announcement 99150, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, GA 30341, telephone (770) 488–2723, Email address SLH3@cdc.gov.

For program technical assistance, contact: Susan Board, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC), OECSP, 1600 Clifton Road, Mailstop D40, Atlanta, Georgia 30333, Telephone: (404) 639–2376, Email: SBB1@cdc.gov

Dated: May 20, 1999.

Diane D. Porter,

Acting Director, National Institute for Occupational Safety and Health Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–13330 Filed 5–25–99; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee for Energy-Related Epidemiologic Research: Conference Call Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following conference call meeting.

Name: Advisory Committee for Energy-Related Epidemiologic Research (ACERER).

Time and Date: 2 p.m.–3 p.m., EDT, May 27, 1999.

Place: The conference call will originate at the National Center for Environmental Health (NCEH), CDC, in Atlanta, Georgia. Please see **SUPPLEMENTARY INFORMATION** for details on accessing the conference call.

Status: Open to the public, limited only by the availability of telephone ports.

Purposes: This committee is charged with providing advice and recommendations to the Secretary, Health and Human Services (HHS); the Assistant Secretary for Health, HHS; the Director, CDC; and the Administrator, Agency for Toxic Substances and Disease Registry, on establishment of a research agenda and the conduct of a research program pertaining to energy-related analytic epidemiologic studies.

Matters To Be Discussed: The conference call agenda is to reach consensus on whether or not the ACERER should take on the evaluation of the National Cancer Institute's Chernobyl study.

Agenda items are subject to change as priorities dictate.

SUPPLEMENTARY INFORMATION: This conference call is scheduled to begin at 2 p.m., Eastern Time. To participate in the conference call, please dial 1–877–322–9654 and enter conference code 457922. You will then be automatically connected to the call. This notice is being published less than 15 days before the meeting due to the urgency of responding to a request made to the ACERER by the Deputy Assistant Secretary for Science Policy, HHS.

CONTACT PERSON FOR MORE INFORMATION: Michael J. Sage, Executive Secretary, ACERER, and Deputy Director, Division of Environmental Hazards and Health Effects, NCEH, CDC, 4770 Buford Highway, NE, (F–28), Atlanta, Georgia 30341–3724, telephone 770/488–7040, fax 770/488–7044.

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the CDC and ATSDR.

Dated: May 21, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–13488 Filed 5–25–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee on Immunization Practices: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting:

NAME: Advisory Committee on Immunization Practices (ACIP).

TIMES AND DATES:
8:45 a.m.–5:30 p.m., June 16, 1999.
8 a.m.–3 p.m., June 17, 1999.

PLACE: Atlanta Marriott North Central, 2000 Century Boulevard, NE, Atlanta, Georgia 30345–3377.

STATUS: Open to the public, limited only by the space available.

Purpose

The Committee is charged with advising the Director, CDC, on the appropriate uses of immunizing agents. In addition, under 42 U.S.C. § 1396s, the Committee is mandated to establish and periodically review and, as appropriate, revise the list of vaccines for administration to vaccine-eligible children through the Vaccines for Children (VFC) program, along with schedules regarding the appropriate periodicity, dosage, and contraindications applicable to the vaccines.

Matters To Be Discussed

The agenda will include updates from the Food and Drug Administration; update from the National Center for Infectious Diseases; the National Immunization Program; the Vaccine Injury Compensation Program; the National Vaccine Program; the adult immunization working group; the general recommendations working group; issues related to transition to an

all-IPV schedule; revision of hepatitis B recommendations; consolidated Vaccines for Children resolution for hepatitis B vaccine; recommendation for use of pneumococcal conjugate vaccine; revaccination with pneumococcal polysaccharide vaccine; pneumococcal polysaccharide vaccine in adults with HIV infection; update on influenza; American Academy of Family Physicians recommendation for universal influenza vaccination starting at age 50 years; status of immunization of bone marrow transplant (BMT) recipients publication; discussion on vaccines related to bioterrorism; teaching immunization for medical education (TIME) project; recommendations for nursing home immunization: a HCFA/CDC collaboration; cost-effectiveness and economic analysis of immunization compared to other health interventions; electronic updating of ACIP recommendations; and Institute of Medicine report on priorities for vaccines development. Other matters of relevance among the committee's objectives may be discussed.

Agenda items are subject to change as priorities dictate.

CONTACT PERSON FOR MORE INFORMATION: John R. Livengood, M.D., Director, Division of Epidemiology and Surveillance, National Immunization Program, CDC, 1600 Clifton Road, NE, M/S E–61, Atlanta, Georgia 30333, telephone 404/639–8254.

The Director, Management Analysis and Services office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: May 20, 1999.

Carolyn J. Russell

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–13333 Filed 5–25–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration of Children and Families

[Program Announcement No. ACF/ACYF 99–06]

Fiscal Year 1999 Discretionary Announcement for Head Start Family Literacy Projects

AGENCY: Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF), DHHS.

ACTION: Notice of announcement of the availability of funds and request for applications from organizations with experience in family literacy efforts to develop training and technical assistance programs in family literacy for Head Start and Early Head Start grantees.

SUMMARY: The Administration on Children, Youth and Families is making available $3,000,000 annually for each of the next five years to support one or more family literacy projects (FLPs). The project(s) funded under this effort will work cooperatively with the Head Start Bureau in designing and implementing training and technical assistance programs to support and strengthen the family literacy activities carried out by Head Start/Early Head Start grantees.

The overall goal of the family literacy project is to improve the quality, intensity and outcomes of the family literacy services provided by Head Start and Early Head Start grantees in order to increase lifelong learning for Head Start and Early Head Start children and their parents and to assist families in achieving self sufficiency. The cooperative agreement(s) will be awarded competitively to eligible applicant(s).

DATES: The closing date and time for receipt of applications is 5:00 p.m. (Eastern Time Zone).

FOR FURTHER INFORMATION CONTACT: A copy of the program announcement and Necessary application forms can be obtained by contacting: Family Literacy Projects, ACYF Operation Center, 1815 North Fort Myer Drive, Suite 300, Arlington, Virginia 22209. The telephone number is: 1–800–351–2293.

Copies of the program announcement can be downloaded from the Head Start web site at: *www.acf.dhhs.gov/programs/hsb*

Eligible Applicants

Applicants must be public or private nonprofit or for-profit organizations with the capability to implement a family literacy effort of national scope.

Project Duration

Awards, on a competitive basis, will be for a one-year budget period; project periods will be for five years.

Federal Share of Projects

Although there are no matching requirements, applicants are encouraged to provide non-Federal contributions to the project.

Statutory Authority: The Head Start Act, as amended, 42 U.S.C. 9831 *et seq.*

(Catalog of Federal Domestic Assistance. Number 93.600, Head Start)

Dated: May 20, 1999.

Patricia Montoya,

Commissioner, Administration on Children, Youth and Families.

[FR Doc. 99–13425 Filed 5–25–99; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food And Drug Administration

[Docket No. 99F–1420]

Goodyear Tire and Rubber Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Goodyear Tire and Rubber Co. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of butylated reaction product of *p*-cresol and dicyclopentadiene as an antioxidant in pressure sensitive adhesives intended for use in contact with food.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 9B4663) has been filed by Goodyear Tire and Rubber Co., c/o Keller and Heckman LLP, 1001 G St. NW., suite 500 West, Washington, DC 20001. The petition proposes to amend the food additive regulations in § 175.125 *Pressure-sensitive adhesives* (21 CFR 175.125) to provide for the safe use of butylated reaction product of *p*-cresol and dicyclopentadiene as an antioxidant in pressure sensitive

adhesives intended for use in contact with food.

The agency has determined under 21 CFR 25.32(i) that this action is of the type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: May 5, 1999.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 99–13347 Filed 5–25–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food And Drug Administration

[Docket No. 99F–1422]

Sumitomo Chemical Co. Ltd.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Sumitomo Chemical Co., Ltd. has filed a petition proposing that the food additive regulations be amended to provide for the expanded safe use of 2,4-di-*tert*-pentyl-6-[1-(3,5-di-*tert*-pentyl-2-hydroxyphenyl)ethyl]phenyl acrylate as an antioxidant and/or stabilizer for polypropylene, polystyrene, rubber modified polystyrene, and styrene block copolymers intended for use in contact with food.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 9B4661) has been filed by Sumitomo Chemical Co., Ltd., c/o Keller and Heckman LLP, 1001 G St. NW., suite 500 West, Washington, DC 20001. The petition proposes to amend the food additive regulations in § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) to provide for the expanded safe use of 2,4-di-*tert*-pentyl-6-[1-(3,5-di-*tert*-pentyl-2-hydroxyphenyl)ethyl]phenyl acrylate as an antioxidant and/or stabilizer for polypropylene, polystyrene, rubber modified polystyrene, and styrene block copolymers intended for use in contact with food.

The agency has determined under 21 CFR 25.32(I) that this action is of the type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: May 5, 1999.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 99–13254 Filed 5–25–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Ear, Nose, and Throat Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Ear, Nose, and Throat Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on June 18, 1999, 8:30 a.m. to 5:30 p.m.

Location: Corporate Bldg., conference room 020B, 9200 Corporate Blvd., Rockville, MD.

Contact Person: Harry R. Sauberman, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2080, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12522. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss generic issues relating to the safety and efficacy of middle ear amplification devices.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by June 4, 1999. Oral presentations from the public will be scheduled between approximately 9 a.m. and 10 a.m., and for an additional 30 minutes near the end of the committee deliberations. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before June 4, 1999, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations: On June 18, 1999, from 4:30 p.m. to 5:30 p.m., the meeting will be closed to the public to permit discussion and review of trade secret and/or confidential commercial information (5 U.S.C. 552b(c)(4)) relating to present and future agency issues.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: May 20, 1999.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 99–13348 Filed 5–25–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of June 1999:

Name: Maternal and Child Health Research Grants Review Committee

Date: June 16–18, 1999 (Wednesday, Thursday and Friday)

Time: 8:00 a.m. to 5:00 p.m.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, Maryland 20815.

The meeting is open on Wednesday, June 16 from 9:00–10:00 a.m., and closed for the remainder of the meeting.

Agenda

The open portion of the meeting will cover opening remarks by the Acting Director, Division of Research, Training and Education, who will report on program issues, congressional activities, and other topics of interest to the field of maternal and child health. The meeting will be closed to the public on Wednesday, June 16, 1999 from 10:00 a.m., to the remainder of the meeting, for the review of grant applications. The closing is in accordance with the provisions

set forth in section 552b(c)(6), Title 5 U.S.C., and the Determination by the Associate Administrator for Management and Program Support, Health Resources and Services Administration, pursuant to Public Law 92–463.

Anyone wishing to obtain a roster of members, minutes of meetings, or other relevant information should write or contact Gontran Lamberty, Dr. P.H., Executive Secretary, Maternal and Child Health Grants Review Committee, Room 18A–55, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, or by telephone at (301) 443–2190.

Dated: May 14, 1999.

Jane Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 99–13349 Filed 5–25–99; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4356–N–20]

Notice of Submission of Proposed Information Collection to OMB Single Family Appraisals; Emergency Request

AGENCY: Office of the Assistant Secretary for 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 by June 1, 1999, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: The due date for comments is: June 1, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding the proposal. 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 employing new forms pertaining to appraisals of FHA-insured single family properties. This emergency processing is essential to provide for the immediate, ongoing, responsible administration of FHA-insured single family properties, and to ensure that the appraisals are thorough and are conducted by State-licensed or State-certified appraisers. The success of the FHA insurance program and HUD's ability to protect its financial interest and that of the taxpayers in these properties begins with selection of qualified and knowledgeable appraisers and thorough and independent appraisals of properties. It is necessary for HUD to implement this new process as soon as possible to reduce risk to the FHA insurance fund by providing for more thorough appraisals, conducted by knowledgeable and qualified appraisers, and therefore better protect HUD's and the taxpayers interest in the insurance fund.

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):

(1) Title of the information collection proposal:

''Appraisals of FHA-insured Single Family Properties''

(2) Summary of the collection of information:

(a) Each individual seeking to become an FHA approved appraiser must submit Form HUD–92563 ''Roster Appraiser Designation Application and a copy of the individual's state licensing and/or state certification documentation.

(b) Each FHA approved appraiser, will conduct appraisals of FHA-insured, or prospective FHA-insured single family properties, using the Uniform Residential Appraisal Report (URAR) and the Valuation Condition Sheet (VC Sheet)

The estimated number of respondents is approximately 15,000. The estimated number of appraisals per respondent is estimated to 80 per year.

(3) Description of the need for the information and its proposed use:

The information collection is essential so that HUD can ensure that appraisals of HUD-insured single family properties are conducted by individuals who are qualified, trained and knowledgeable in the real estate appraisal field and that the appraisals of HUD-insured single family properties or prospective insured properties are thorough and independent.

(4) Description of the likely respondents, including the estimated number of likely respondents, and proposed frequency of response to the collection of information:

Eligible appraisers are individuals already State-licensed or State-certified as appraisers. The estimated number of respondents for all collections pertaining to this request is 15,000. The proposed frequency of the response to the collection of information is one-time for acceptance to the approval roster list. The application need only be submitted once. The frequency of submission of the URAR and the VC Sheet depends upon the number of properties appraised. the Department estimates 80 per respondent on an annual basis.

(5) Estimate of the total reporting and recordkeeping burden that will result from the collection of information:

Reporting Burden for the Appraiser Certification:

Number of respondent: 50,000

Total burden hours (@ 0.50 hours per response): 25,000

Reporting Burden for the VC Sheet:

Description	Number of respondents	Number of responses per	Total annual responses	Hours per responses	Total hours response
VC Form	15,000	80	1,200,000	0.30	360,000
Homebuyer Summary	15,000	80	1,200,000	0.10	120,000
Application for Fee Personnel Designation	50,000	1	50,000	0.50	25,000

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: May, 1999.

David S. Cristy,

Director, IRM Policy and Management Division.

[FR Doc. 99–13486 Filed 5–25–99; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4493–N–01]

Ginnie Mae Release of Certain Geographic and Other Data on Mortgage-Backed Securities

AGENCY: Government National Mortgage Association (Ginnie Mae), HUD.

ACTION: Notice.

SUMMARY: This notice sets forth the intent of Ginnie Mae, a government corporation within the Department of Housing and Urban Development (HUD), to release certain geographic and other data submitted by Ginnie Mae issuers.

DATES: Effective date: May 26, 1999. Comments due date: Comments objecting to the release of the information described in this notice are due on or before June 9, 1999.

FOR FURTHER INFORMATION CONTACT: Robert Fry, Director, Capital Markets, Room 6210, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410; telephone 1–202–401–8970 (this is not a toll free number). Speech or hearing impaired individuals may access this number via TTY by calling the toll free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The Government National Mortgage Association (Ginnie Mae), a corporation that is wholly owned by the federal government, was created in 1968 to assist in the movement of funds from investors into the housing market. Ginnie Mae guarantees the timely payment of principal and interest on single and multiclass mortgage-backed securities issued by private institutions. The securities are backed by pools of mortgage loans which are insured or guaranteed by the Federal Housing Administration (FHA), the Department of Veterans Affairs (VA), the Rural Housing Service, and the Secretary of HUD under section 184 of the Housing and Community Development Act of 1992 (Pub.L. 102–550, approved October 28, 1992; 106 Stat. 3672, 3739; 12 U.S.C. 1715z–13a).

The Public Securities Association, now The Bond Market Association (TBMA), has long requested various information about the mortgages backing the securities. Specifically, TBMA has requested information regarding the geographic location of the loans in each pool by State, the number of loans in the pool, and the breakdown of loans in each pool by insurance or guaranty program, generally FHA or VA. Ginnie Mae has made an initial policy determination that release and publication of this information for each pool in the Ginnie Mae mortgage-backed securities (MBS) program would be advantageous to investors and to the MBS program. At present, the Government Sponsored Entities disclose such information with respect to their MBS. Unless this information is available, investors may use less favorable assumptions when pricing Ginnie Mae guaranteed securities. If this information is available to investors, the net effect should be more accurate pricing and tighter yield spreads. Those yield spreads will inure to the benefit of the ultimate beneficiaries of the Ginnie Mae MBS program—the purchasers of homes financed through federally insured or guaranteed loans.

Ginnie Mae presently intends to respond to TBMA's request by commencing publication of this information at a date in July 1999, and to continue to publish this information on a quarterly basis thereafter.

The Department of Justice has advised HUD that, in the case of numerous information submitters, disclosure by an agency is permitted after publication of the agency's intent to release such information in a manner calculated to provide notice and affording affected parties an opportunity to comment. Such notice and opportunity to comment serves in lieu of publication of a notice and comment regulation. HUD first used this procedure in connection with disclosure of past note sale bids by publication in the **Federal Register** and the *Commerce Business Daily* (see 63 FR 36255 (July 2, 1998) and CBDNet Submission No. 230722 (July 30, 1998)). Following this procedure, Ginnie Mae is publishing this notice of Ginnie Mae's intent to release this information and to continue the quarterly release of this information.

Commenters should submit their statements to the Ginnie Mae contact identified in the **FOR FURTHER INFORMATION** section of this notice. Ginnie Mae is particularly interested in receiving comments from Ginnie Mae submitters and investors. Commenters shall have until June 9, 1999 to provide Ginnie Mae with a detailed written statement of their objections, if any, to release of the information. Such statement shall specify all grounds for withholding the information and shall specifically demonstrate why the information is a trade secret or commercial or financial information that is privileged or confidential. If a commenter maintains that disclosure would cause competitive harm, for example, the statement should show that disclosure would reasonably be expected to cause such harm. Conclusory statements that the information would be useful to competitors or similar conclusory statements generally will not be considered sufficient to justify confidential treatment.

Ginnie Mae will carefully consider commenters' objections before determining whether to disclose the information. If Ginnie Mae decides to disclose the information over the objections of a submitter, Ginnie Mae will advise the submitter in a written notice of its intent to disclose the information 10 working days before the specified disclosure date.

Dated: May 19, 1999.

George S. Anderson,

Executive Vice President, Government National Mortgage Association.

[FR Doc. 99–13264 Filed 5–25–99; 8:45 am]

BILLING CODE 4210–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of a Draft Jersey Coast Refuges Comprehensive Conservation Plan for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service announces the availability for public review of a draft Comprehensive Conservation Plan for Edwin B. Forsythe National Wildlife Refuge and Cape May National Wildlife Refuge—collectively known as the Jersey Coast Refuges. This plan will assist the Service in identifying what role the Refuges will play in supporting the mission of the National Wildlife Refuge System and addressing community expectations for public use.

The draft plan describes two alternatives for management of the Refuges, and discusses the process used to develop the alternatives and their environmental consequences. It describes the potential effects of each

alternative on the physical, biological, and socio-economic environment. The No Act Alternative discusses the Service's current level of activities for habitat and population management, public recreation opportunities, land acquisition, and office and visitor facilities. The Action Alternative will allow the Service to initiate or expand additional habitat and population management efforts, wildlife-dependent recreation opportunities, land protection efforts, and consider new office and visitor center facilities.

The Service is seeking public input on the Draft Comprehensive Conservation Plan. With public review and input to this draft, the Action Alternative will be developed in more detail as the Final Comprehensive Conservation Plan. The Final Plan will guide the Service on the future direction and management of E.B. Forsythe NWR and Cape May NWR for the next 15 years.

The Plan is available from the refuges, local public libraries in Southern New Jersey, and on the Web at *http://www/fws.gov/r5ebfwr.* You may also contact Alison Whitlock: Division of Realty; 300 Westgate Center Drive; Hadley, MA 01035–9589.

Dated: May 21, 1999.

Sherry W. Morgan,

Geographic Assistant Regional Director—North.

[FR Doc. 99–13487 5–25–99; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

North American Wetlands Conservation Act: Request for Evaluation Grant Proposals for Year 2000

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of request for proposals.

SUMMARY: The purpose of this notice is to advise the public that over the period June 1, 1999, to July 15, 1999, we, the U.S. Fish and Wildlife Service (Service), will entertain proposals that request matching funds for projects that evaluate the success of North American Wetlands Conservation Act (NAWCA) projects, or that will ensure the success of future NAWCA projects by improving strategic conservation planning capabilities. We will give funding priority to projects related to existing wetland conservation implementation plans, to be conducted in a partnership mode by wetland managers and scientists. Project criteria, proposal formatting and other essential application information is provided here. Funding is limited to projects located in the United States.

DATES: Initial proposals (pre-proposals) must bear postmarks no later than Thursday, July 15, 1999.

ADDRESSES: Address proposals to: North American Waterfowl and Wetlands Office, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Suite 110, Arlington, Virginia, 22203, Attn: Evaluation Grants Coordinator.

FOR FURTHER INFORMATION CONTACT: Dr. Rex R. Johnson, Evaluation Grants Coordinator, North American Waterfowl and Wetlands Office, Patuxent Wildlife Research Center, 11510 American Holly Drive, Laurel, Maryland, 20708–4017, 301/497–5674; facsimile 301/497–5706, rex—johnson@fws.gov.

SUPPLEMENTARY INFORMATION:

North American Wetlands Conservation Act Evaluation Grants

1. Introduction

Since its inception in 1989, the North American Wetlands Conservation Act (NAWCA or Act) has added a new dimension to the conservation of wetland-associated migratory birds and the diverse wetland ecosystems upon which they and many other fish and wildlife species depend. Never before had Federal legislation been passed with the express purpose of creating partnerships among Federal and non-Federal wetland conservationists or with the explicit goal of implementing management plans emanating from international treaties and conventions. The Act was precedent-setting in its support of the new and innovative partnerships that were emerging from implementation of the North American Waterfowl Management Plan (NAWMP) and visionary in its anticipation of major national and international conservation initiatives for nongame migratory birds. Moreover, an institutional framework was created for garnering additional resources and pooling them to implement, via partnerships, high priority wetland conservation projects across Canada, the United States, and Mexico. Over the past eight years, $249 million of NAWCA grant funds have been leveraged with $516 million of partner funds and allocated through a highly competitive process to 588 projects in North America. However, the success of NAWCA involves more than the efficient allocation of limited Federal financial resources to support partner projects. The ultimate success of the Act hinges on efficiency and effectiveness in the attainment of biological ends—the conservation of migratory birds and the North American wetland ecosystems upon which many species of migratory birds and other wildlife depend. The evaluation grants program, described below, is designed to address how successfully the program is delivering the migratory bird and other wildlife resource benefits anticipated by the Act.

1.1 The Purposes of the Act

Any strategy for implementing NAWCA or procedures for monitoring and evaluating its effectiveness must arise from the purposes of the Act:

* * * To encourage partnerships among public agencies and other interests—

(1) To protect, enhance, restore, and manage an appropriate distribution and diversity of wetland ecosystems and other habitats for migratory birds and other fish and wildlife in North America;

(2) To maintain current or improved distributions of migratory bird populations; and

(3) To sustain an abundance of waterfowl and other migratory birds consistent with the goals of the North American Waterfowl Management Plan and the international obligations contained in the migratory bird treaties and conventions and other agreements with Canada, Mexico, and other countries.

These purposes infer an explicit and measureable relationship between wetland conservation and wetland-wildlife management and values at a North American scale. While habitat benefits for all wetland-associated fish and wildlife are recognized, the stated emphasis on the Act is on ''current or improved distributions of migratory bird populations'' consistent with ''international obligations.'' The international migratory patterns of these birds is the thread which binds the patchwork of regional and national conservation work into a truly continent-wide quilt of wetland conservation.

1.1.1 Improving NAWCA Implementation Through Evaluation

Section 19 of the 1994 amendments to NAWCA called for the development of ''a strategy to assist in implementation of the Act'' and ''procedures to monitor and evaluate the effectiveness of wetlands conservation projects completed under this Act.'' Specifically * * *

Not later than January 31, 1996, the Secretary, in cooperation with the [North American Wetlands Conservation] Council, to further the purposes of the Act shall—

(1) Develop and implement a strategy to assist in the implementation of this Act in conserving the full complement of North American wetlands systems and species

dependent on those systems, that incorporates information existing on the date of the issuance of the strategy in final form on types of wetlands habitats and species dependent on the habitats; and

(2) Develop and implement procedures to monitor and evaluate the effectiveness of wetlands conservation projects completed under this Act.

The wording of Section 19 is consistent with the principles of adaptive resource management in which planning, implementation and evaluation function as interrelated parts of an iterative cycle. Planning has merit only to the extent it provides a strategy for implementation; and evaluation, only to the extent it allows refinements in future planning. Thus, the greatest benefits of planning, evaluation, or implementation cannot be realized without integrated progress in all three elements.

2. Evaluation Grant Goals

To foster persistent partnerships among wetland and wildlife managers and scientists to generate reliable information through evaluation that is used to enhance future Act effectiveness through improved biological planning or partnering strategies.

It cannot be overemphasized that the purpose of Evaluation Grants is to maximize the effectiveness of future wetlands conservation projects completed under the Act. Evaluation need should be identified by wetland or migratory bird managers who have traditionally implemented conservation activities under the Act. Thus, Evaluation Grant proposers should be past or potential NAWCA grant recipients (including, but not limited to, NAWMP Joint Venture representatives) partnered with technically-capable scientists. This partnering approach to evaluation will help ensure that Evaluation Grant projects:

(1) originate from priority management information needs for strategic conservation delivery;

(2) are derived from and support established habitat conservation plans or objectives;

(3) are sound and scientifically-based; and

(4) are used to direct future NAWCA wetland conservation implementation.

2.1 Priority Projects

Proposed projects should evaluate the effectiveness of past or current NAWCA projects in achieving explicit program objectives, or should result in a refined understanding of wetland/landscape function, or migratory bird responses to wetland habitat management, in ways that enhance future NAWCA conservation delivery. Migratory bird functions should be evaluated in the context of wetland characteristics and landscape structure. Projects that evaluate the composition, management, or dynamics of established conservation partnerships such as NAWMP Joint Ventures with a goal of improving partnering strategies also will be favorably considered.

2.2 Eligibility

Funding is limited to U.S. project proposals.

2.3 Project Duration

Projects of 1–2 years in duration may be proposed. Projects spanning 3 years will be considered but are not encouraged. Three-year project proposals must include an explicit justification for the extended duration.

2.4 Available Funds

The total funding package presented to the North American Wetlands Conservation Council (Council) in FY2000 will not total ≤$500,000 of NAWCA funds. Selected projects will be funded for their full duration from the FY2000 allocation. A maximum project funding limit has not been established; however, proposals requesting a total of ≤$100,000 of NAWCA funds are most likely to be selected.

2.4.1 Matching Funds Requirements

Project partners must match grant requests with non-federal funds or other contributions by at least a 1-to-1 ratio. Acceptable matching contributions are described in Appendix A.

3. Proposal Development

Proposal development will proceed in 2 stages beginning with the preparation and review of brief (3–5 page) preproposals. Preproposals will be screened by Council representatives, who will then work with successful applicants to develop a limited number into full proposals with objectives, partnerships, products, and outcomes mutually agreed upon by the Council and grant applicants.

A Principal Investigator (PI) and a Project Officer (PO) that will administer the grant agreement, should be identified for each project. The PI and PO may be the same person. All written correspondence will be sent to the PI and PO; however, the PO must be:

(1) affiliated with the PI's organization;

(2) knowledgeable about biological, partnership, and administrative aspects of the proposal; and

(3) readily available to provide information.

Preproposals and full proposals should be accompanied by a cover page with the following information:

A. Project Title
B. Principal Investigator's
  1. Name
  2. Title
  3. Organization
  4. Address
  5. Telephone number
  6. Facsimile number
  7. E-mail address

3.1 Project Justification

A detailed project justification should be included in preproposals and full proposals. The justification should be derived from and refer to an established conservation organization's biological foundation and explicit objectives for past or current habitat projects, or for populations. The justification should be developed in light of Evaluation Grant goals and review criteria (section 4.2). Achieving Evaluation Grant project objectives should result in fulfilling the evaluation needs described in the justification.

3.2 Preproposals

Five copies of preproposals must be submitted by July 15, 1999, and should provide a project a set of explicit objectives, preliminary methods, and a budget with a source of matching funds.

Preproposals should adhere to the following outline:

A. Justification (project description, explicit objectives)
B. Preliminary Methods
C. Preliminary Budget (see Appendix B) and Source of Matching Funds (letters of committment not required for preproposals)

3.3 Full Proposals

Five copies of full proposals are due by November 1, 1999. Full proposals should adhere to the following outline:

A. Abstract
B. Project Description
  1. Justification
  2. Objectives
  3. Methods
  Study Area (if appropriate)
  Data Acquisition
  Data Analysis
  4. Products and Future Applications
  5. Management Outreach
C. Project Partners and Management
D. Budget—(see Appendix B)
  1. Funds Requested
  2. Matching Funds or Services
  3. Total Project Budget
E. Project Timetable
F. Literature Cited
G. Appendix A—Investigator Qualifications

H. Appendix B—Letters of Matching Commitment from Partners (see Appendix C)

4. Preproposal and Full Proposal Review

Council representatives will review preproposals and full proposals, and will present funding recommendations based on full proposal reviews to the Council.

4.1 How To Submit a Proposal

Preproposals and full proposals should be submitted by the required deadlines (section 6) to: Evaluation Grants Coordinator, North American Waterfowl and Wetlands Office, 4401 N. Fairfax Drive, Suite 110, Arlington, VA 22203.

4.2 Review Team

The review team will consist of the Evaluation Grants Coordinator, 2 North American Wetlands Conservation Council Staff, and 1 USGS-Biological Resources Division scientist with expertise in wetlands and landscape ecology. Other individuals will be enlisted to review preproposal and full proposal methods related to their areas of expertise when necessary.

4.3 Review Criteria

At a minimum, preproposals and full proposals should address the following issues, which will constitute the general review criteria. A rigid ''scoring'' system will not be used to determine which preproposals and full proposals are most meritorious. The review team will use sound professional judgment to evaluate proposals, in the context of communication among qualified professionals.

Partnerships: The Act is predicated on the power of partnerships to deliver wetlands conservation. Proposals for evaluation and planning should likewise include strong partnerships. Prospective grantees are expected to build upon existing wetlands conservation partnerships to maximize the use of and coordination with existing planning, implementation and evaluation infrastructures rather than seek to develop new or competing organizations.

Contribution to increasing the effectiveness of the Act: Act funds have been used to varying degrees to fund wetlands conservation projects across the country. Some regions have received little Act funding while others have applied many millions of dollars to implement projects. Proposals will be judged on the extent to which they evaluate and affect NAWCA projects, past and future. Thus, priorities will be on: evaluation/planning for areas with a large number of projects; large affected acreages and/or significant investment of Act funds; and/or projects or methods related to critical wetland conservation approaches for that region.

Contribution to integration of migratory bird conservation: Delivering NAWCA implementation funds to projects best fulfilling the purposes of the Act requires integration of NAWMP goals with those of other major bird initiatives. The extent to which the proposals advance integrated conservation of waterfowl, neotropical migratory birds, shorebirds, and other wetland-associated migratory birds will be a principal criterion in proposal evaluation.

Contribution to a landscape-level context for wetland conservation: Evaluation units should be ecologically based and appropriate in scale to address regional wetlands conservation goals and objectives and facilitate a meaningful linkage to continental migratory bird population objectives, and those of other wetlands-dependent wildlife as available. Therefore, proposals should address the evaluation needs for wetland habitats in the context of ecologically-based landscapes as opposed to an individual wetland.

Status of biological planning and evaluation: Biological planning, evaluation and monitoring is relatively advanced in some regions of the U.S., and almost non-existent in others. Proposals addressing the full range of planning and evaluation consistent with Council goals are encouraged. These may range from initiation of the adaptive management process in areas currently using little or no proactive, integrated, biological planning, to evaluation of progress toward fulfilling objectives derived from ongoing biological planning efforts.

Contribution to the biological foundation for wetland and associated migratory bird conservation: Projects should facilitate the linkage of regional or continental migratory bird population responses to landscape-level habitat conservation objectives. This linkage represents a fundamental principle in the Council's evaluation strategy, and projects seeking to establish or significantly improve that linkage will be a priority.

Contributions to the effectiveness of future partnerships: The success of future NAWCA implementation is dependent on strong partnerships backed by sound biological planning. The evolution and composition of partnerships dictates their success in delivering migratory bird conservation under NAWCA. Projects that evaluate the dynamics of past NAWCA partnerships with the goal of increasing the effectiveness of future partnerships will be seriously considered.

Commitment to long-term regional planning and evaluation: The extent to which applicants demonstrate the likelihood of ''institutionalizing'' the planning and evaluation efforts for which Act funding is sought is a significant consideration. The Council seeks to insure that Act funds are used to catalyze these efforts, and will deprioritize proposals in which the partners in the planning and evaluation effort are clearly dependent upon the Act for continued future progress. This criterion can be viewed as analogous to the ''long-term'' criterion used to evaluate implementation projects.

5. Grants Administration and Performance Reporting

Evaluation Grants will be administered by NAWWO staff, and evaluation grant recipients will be required to provide detailed annual and project completion reports (see Appendix D for reporting formats) by October 1 each year through project termination. Annual and final reports will be presented to the Council and Council Staff by the Council Coordinator or Evaluation Grants Coordinator at their November/December meetings.

6. Schedule

The following schedule will be adhered to in soliciting, reviewing, and funding Evaluation Grants proposals:

Request for Proposals	1 June 1999.
Due Date for Proposals	15 July 1999.
Preproposal Reviews Completed and Proposers Notified	15 August 1999.
Full Proposals Due	1 November 1999.
Funding Recommendations Presented to Council	December 1999.
Evaluation Grant Awards Announced and Funds Disbursed	January/February 2000.

Appendix A—Matching Contributions

Acceptable Matching Contributions—

Direct project-related expenditures for:
Equipment/Supplies
Labor (non-Federal employees)
Travel
Cash (non-Federal sources)
Related evaluation/implementation expenditures (non-Federal funds) incurred within previous 2 years (consult Evaluation Grants Coordinator)
Other (consult Evaluation Grants Coordinator)
Waiver-of-Overhead (within non-Federal agency/organization established policy guidelines)

Unacceptable Contributions—

Contributions of Federal employee staff time
Federal Aid in Wildlife/Sport Fish Restoration grants to States
Funds that have a Federal origin
Evaluation/implementation costs incurred> 2 years before project performance period
Any contribution used to match a previous Federal or non-Federal grant
Other contributions determined to be not acceptable (consult with Evaluation Grants Coordinator)

Appendix B—Budgets

PREPROPOSAL BUDGET FORMAT

	FY00	FY01	FY02
NAWCA Funds Requested			
Matching Contributions			
Total			

FULL PROPOSAL BUDGET FORMAT

	FY00		FY01		FY02	
	NAWCA	Match	NAWCA	Match	NAWCA	Match
Personnel						
Jane Doe @ × FTE						
Equipment						
Supplies*						
Travel						
Other						
Indirect Costs						
Total						

*Criteria for supplies.

Appendix C—Sample Letter for Commitment of Matching Contributions

April 19, 1999.

Mr. David A. Smith,
Coordinator, North American Wetlands Conservation Council, North American Waterfowl and Wetlands Office, 4401 N. Fairfax Drive, Rm 110, Arlington, VA 22203

Dear Mr. Smith: The <insert name of contributing agency or organization> is committed to providing funds to match the grant request entitled <insert proposal name> submitted by <insert name of proposing agency or organization>. Contributions meet the eligibility requirements explained in the Request for Proposals for the North American Wetlands Conservation Act Evaluation Grants. The contribution does not include funds from the Federal Aid in Wildlife/Sport Fish Restoration grants to State programs or other Federal monies. Following is an explanation of contributions:

We intend to provide <$$> in FY00 and <$$> in FY01. Of these funds, <$$> will be used for <insert staff/services to be provided by contractual or temporary hires>. This is the fair market value of these services.

<$$> will be used for <insert direct expenditures for purchases, travel/transportation>. This is the fair market value of these expenditures.

<$$> are in-kind contributions that will be used for <insert staff/services related to the proposed project>. This is the fair market value of these services.

<insert name of contributing agency or organization> is pleased to be a partner in <insert proposal name> and this match is put forward with full knowledge and support to leverage other non-Federal and Federal grant funds.

Sincerely,
<insert name of agency/organization representative>
<insert title>

Appendix D—Reporting Formats

Return 3 copies to: Evaluation Grants Coordinator, North American Waterfowl and Wetlands Office, 4401 N. Fairfax Drive, Rm 110, Arlington, VA 22203.

A. Annual Performance Reporting—
I. Cover Page:
Project Title
Reporting Period
PO and PI names and addresses
II. Executive Summary
III. Project Justification
IV. Objectives
V. Methods
VI. Accomplishments/Summary of Findings to date
VII. Management Outreach to date
VIII. Grant Funds Expended/Remaining
IX. Projected Activities/Time Table
X. Literature Cited

B. Project Completion Report—
I. Cover Page:
Project Title
Reporting Period
PO and PI names and addresses
II. Executive Summary
III. Project Justification
IV. Objectives
V. Methods
VI. Results and Discussion/Products[a]
VII. Management Outreach and Impacts to date
VIII. Future Management Outreach and Outcomes
IX. Continuing Evaluation Needs—
Institutionalizing the Evaluation Project
Future Evaluation—the next steps
X. Literature Cited

The detailed description of the submission and review schedule, format for pre-proposals and full proposals, and proposal review criteria, contained herein, may also be viewed and downloaded from the North American Waterfowl and Wetlands Office (NAWWO) internet web site at: http://www.fws.gov/r9nawwo/nawcahp.html after June 1, 1999, or by calling the NAWWO secretary at 703/358–1784. Pre-proposals and full proposals must contain all required components on the postmarked date. Pre-proposals and full

[a] Include≥ 3 hard copies of cartographic products that result from NAWCA Evaluation Grant projects.

proposals lacking required components are subject to being declared ineligible and not further considered for funding.

We have submitted information collection requirements for the NAWCA Evaluation Grants Program to the Office of Management and Budget (OMB) for review and approval under the Paperwork Reduction Act of 1995, Public Law 104–13. The OMB control number is 1018–0100. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information request unless it displays a currently valid OMB control number. The information solicited: is necessary to gain a benefit in the form of a grant, as determined by the North American Wetlands Conservation Council and Migratory Bird Conservation Commission; is necessary to determine the eligibility and relative value of evaluation projects; and results in an approximate paperwork burden of 8 hours for each pre-proposal and 40 hours for each proposal; and does not carry a premise of confidentiality. The information collected in this program will not be part of a system of records covered by the Privacy Act (5 U.S.C. 552(a)).

Dated: May 21, 1999.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 99–13424 Filed 5–25–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–09–1320–01, WYW148372]

Coal Exploration License, WY

AGENCY: Bureau of Land management, Interior.

ACTION: Notice of invitation for coal exploration license.

SUMMARY: Pursuant to section 2(b) of the Mineral Leasing Act of 1920, as amended by section 4 of the Federal Coal Leasing Amendments Act of 1976, 90 Stat. 1083, 30 U.S.A. 201 (b), and to the regulations adopted as 43 CFR 3410, all interested parties are hereby invited to participate with Powder River Coal Company on a pro rata cost sharing basis in its program for the exploration of coal deposits owned by the United States of America in the following-described lands in Campbell and Converse Counties, WY:

T. 41 N., R. 70 W., 6th P.M., Wyoming
Sec. 19: Lots 6–11, 12 (S2), 13–20;
Sec. 20: Lots 5 (S2), 6 (S2), 7 (S2), 8 (S2), 9–16;
Sec. 21: Lots 5 (S2), 11–14;
Sec. 28: Lots 1–15, NESW;
Sec. 29: Lots 1–16;
Sec. 30: Lots 5–12;
T. 42 N., R. 70 W., 6th P.M., Wyoming
Sec. 26: Lots 3–6, 11–14;
Sec. 27: Lots 1–16;
Sec. 28: Lots 1–16;
Sec. 29: Lots 1–16;
Sec. 30: Lots 5–20;
Sec. 30: Lots 5–20;
T. 41 N., R. 71 W., 6th P.M., Wyoming
Sec. 2: Lots 5, 6, 11–14, 19, 20;
Sec. 3: Lots 5, 6, 11–14, 19, 20;
Sec. 10: Lots 1, 2, 7, 8;
Sec. 11: Lots 1–16;
Sec. 12: Lots 11–14;
Sec. 13: Lots 1–8, 11–14;
Sec. 14: Lots 1, 2, 7, 8;
Sec. 24: Lots 1–3, 6–11, 14–16;
Sec. 25: Lots 1–4, 9, 12;
T. 42 N., R. 71 W., 6th P.M., Wyoming
Sec. 25: Lots 1–15;
Sec. 26: Lots 1–14;
Sec. 27: Lots 1, 2, 7–10, 15, 16;
Sec. 34: Lots 1, 2, 7–10, 15, 16;
Sec. 35: Lots 1–8, 11–14.

Containing 11,046.245 acres, more or less.

All of the coal in the above-described land consists of unleased Federal coal within the Powder River Basin Known Recoverable Coal Resource Area. The purpose of the exploration program is to obtain overburden geochemistry, structural information, and coal quality data on the Wyodak-Anderson coal seam.

ADDRESSES: The proposed exploration program is fully described and will be conducted pursuant to an exploration plan to be approved by the Bureau of Land Management. Copies of the exploration plan are available for review during normal business hours in the following offices (serialized under number WYW148372): Bureau of Land Management, Wyoming State Office, 5353 Yellowstone Road, P.O. Box 1828, Cheyenne, WY 82003; and, Bureau of Land Management, Casper Field Office, 1701 East ''E'' Street, Casper, WY 82601.

SUPPLEMENTARY INFORMATION: This notice of invitation will be published in *The News-Record* of Gillette, WY, and the *Douglas Budget* of Douglas, WY, once each week for two consecutive weeks beginning the week of May 24, 1999, and in the **Federal Register**. Any party electing to participate in this exploration program must send written notice to both the Bureau of Land Management and Powder River Coal Company no later than thirty days after publication of this invitation in the **Federal Register**. The written notice should be sent to the following addresses: Powder River Coal Company, Attn: Mark A. Petry, Caller Box 3034, Gillette, WY 82717–3034, and the Bureau of Land Management, Wyoming State Office, Minerals and Lands Authorization Group, Attn: Mavis Love, P.O. Box 1828, Cheyenne, WY 82003.

The foregoing is published in the **Federal Register** pursuant to 43 CFR 3410.2–1(c)(1).

Dated: May 14, 1999.

Pamela J. Lewis,

Chief, Leasable Minerals Section.

[FR Doc. 99–12697 Filed 5–25–99; 8:45 am]

BILLING CODE 4310–22–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–09–1320–01, WYW148388]

Coal Exploration License, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of invitation for coal exploration license.

SUMMARY: Pursuant to section 2(b) of the Mineral Leasing Act of 1920, as amended by section 4 of the Federal Coal Leasing Amendments Act of 1976, 90 Stat. 1083, 30 U.S.A. 201 (b), and to the regulations adopted as 43 CFR 3410, all interested parties are hereby invited to participate with Cordero Mining Company on a pro rata cost sharing basis in its program for the exploration of coal deposits owned by the United States of America in the following-described lands in Campbell County, WY:

T. 46 N., R. 70 W., 6th P.M., Wyoming
Sec. 6: Lots 8–23;
Sec. 7: Lots 5–20;
Sec. 8: Lots 3–6, 9–12;
T. 46 N., R. 71 W., 6th P.M., Wyoming
Sec. 1: Lots 5–20;
Sec. 4: Lots 5–20;
Sec. 9: Lots 1–8;
Sec. 10: Lots 1–10;
Sec. 11: Lots 1–16;
Sec. 12: Lots 1–16;
T. 47 N., R. 71 W., 6th P.M., Wyoming
Sec. 21: Lots 1–16;
Sec. 28: Lots 1–16;
Sec. 33: Lots 1–16;

Containing 6,908.41 acres, more or less.

All of the coal in the above-described land consists of unleased Federal coal within the Powder River Basin Known Recoverable Coal Resource Area. The purpose of the exploration program is to obtain coal quality data.

ADDRESSES: The proposed exploration program is fully described and will be conducted pursuant to an exploration plan to be approved by the Bureau of Land Management. Copies of the exploration plan are available for review during normal business hours in the following offices (serialized under

number WYW148388): Bureau of Land Management, Wyoming State Office, 5353 Yellowstone Road, P.O. Box 1828, Cheyenne, WY 82003; and, Bureau of Land Management, Casper Field Office, 1701 East ''E'' Street, Casper, WY 82601.

SUPPLEMENTARY INFORMATION: This notice of invitation will be published in *The News-Record* of Gillette, WY, once each week for two consecutive weeks beginning the week of May 24, 1999, and in the **Federal Register**. Any party electing to participate in this exploration program must send written notice to both the Bureau of Land Management and Cordero Mining Company no later than thirty days after publication of this invitation in the **Federal Register**. The written notice should be sent to the following addresses: Cordero Mining Company, Attn: Tom Stedtnitz, P.O. Box 1449, Gillette, WY 82717–1449, and the Bureau of Land Management, Wyoming State Office, Minerals and Lands Authorization Group, Attn: Mavis Love, P.O. Box 1828, Cheyenne, WY 82003.

The foregoing is published in the **Federal Register** pursuant to 43 CFR 3410.2–1(c)(1).

Dated: May 14, 1999.

Pamela J. Lewis,

Chief, Leasable Minerals Section.

[FR Doc. 99–12698 Filed 5–25–99; 8:45 am]

BILLING CODE 4310–22–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–060–99–1020–00]

Lewistown Resource Advisory Councils, Notice of Meeting

AGENCY: Bureau of Land Management, Lewistown Field Office.

ACTION: Notice of meeting.

SUMMARY: The Lewistown Resource Advisory Council will meet June 8 and 9, 1999, at the Yogo Inn in Lewistown, Montana.

The June 8 portion of the meeting will begin at 1:00 pm. The topics of the day will include: a briefing by field managers; an update on the off-highway vehicle project; a discussion of the Neal property exchange; a discussion of the escrow account method of land exchanges; and, the potential listing of the prairie dog and mountain plover. The meeting will adjourn at 5:00 pm.

The June 9 portion of the meeting will begin at 7:45 am. The business of the day will include: a discussion of issues on the Upper Missouri National Wild and Scenic River; a review of the national conservation area topic; a time for discussions of team issues; and, an open discussion about issues important to the council. There will be a public comment period at 11:30 am. The meeting will adjourn at 2:00 pm.

DATES: June 8 and 9, 1999.

LOCATION: Yogo Inn, Lewistown, Montana.

FOR FURTHER INFORMATION CONTACT: Malta Field Manager, 501 South 2nd Street East, Malta, Montana 59538.

SUPPLEMENTARY INFORMATION: The meeting is open to the public and there will be a public comment period on June 9, as outlined above.

Dated: May 11, 1999.

David L. Mari,

Field Manager.

[FR Doc. 99–13266 Filed 5–25–99; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

National Park Service

Homestead National Monument of America

AGENCY: National Park Service, Interior.

ACTION: Notice of availability of the Draft General Management Plan/Draft Environmental Impact Statement for Homestead National Monument of America, Nebraska

SUMMARY: The National Park Service (NPS) announces the availability of a Draft General Management Plan/Draft Environmental Impact Statement (DGMP/DEIS) for Homestead National Monument of America (monument), near Beatrice, Nebraska. The document describes and analyzes the environmental impacts of a proposed action and two action alternatives for the future management of the park. A no action alternative also is evaluated. This notice announces that public meetings and an open house will be held to solicit comments on the DGMP/DEIS.

DATES: There will be a 60-day public review period for comments on this document. Comments on the DGMP/DEIS must be received no later than July 30, 1999. Public meetings will be held on Tuesday, May 25, 7:30 to 9:00 p.m. at the Beatrice Public Library, 100 N. 16th St., Beatrice, Nebraska and on Wednesday, May 26, 1999 from 2:00 p.m. to 4:00 p.m., and at the Charles H. Gere Library, 2400 S. 56th St., Lincoln, Nebraska. A public open house, which will provide a more informal opportunity to learn about the plan and to provide comments, will be held on Tuesday, June 29, from 4:00 p.m. to 6:00 p.m. at the Homestead National Monument Visitor Center, located on Highway 4 west of Beatrice, Nebraska.

ADDRESSES: Comments on the DGMP/DEIS should be submitted to the Superintendent, Homestead National Monument of America, route 3, Box 47, Beatrice, Nebraska 68310. Copies of the DGMP/DEIS are available upon request by writing the Superintendent at the same address, by phoning 402–223–3514, or by e-mail at HOME—Administration@nps.gov

FOR FURTHER INFORMATION CONTACT: Superintendent, Homestead National Monument, at the aforementioned address and telephone number.

SUPPLEMENTARY INFORMATION: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969 (Pub. L. 91–190, as amended), the NPS has prepared a DMGP/DEIS with proposed guidance for management of Homestead National Monument of America for the next 10–15 years. In accordance with NPS Management Policies, the DGMP sets forth alternative management concepts for the monument. The alternatives seek to establish a role for the monument within the context of regional trends and plans for conservation, recreation, transportation, economic development, and other regional issues; and identify strategies for resolving issues and achieving management objectives.

Dated: May 18, 1999.

David N. Given,

Deputy Regional Director, Midwest Region.

[FR Doc. 99–13317 Filed 5–25–99; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–409]

In the Matter of Certain CD–ROM Controllers and Products Containing Same—II; Notice of Decision to Extend the Deadline for Determining Whether to Review an Initial Determination Terminating a Respondent From the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to extend by 18 days, or until June 28, 1999, the deadline for determining whether to review an initial determination (ID) (Order No. 15) issued by the presiding administrative law judge (ALJ) in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Tim Yaworski, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205–3096. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on May 13, 1998, based on a complaint filed by Oak Technology, Inc. (''Oak'') of Sunnyvale, California. 63 Fed. Reg. 26625. Four firms were named as respondents, including United Microelectronics Corporation (''UMC'') of Hsinchu, Taiwan. On May 10, 1999, the presiding ALJ issued an ID (Order No. 15) terminating UMC from the investigation on the grounds that its importation and sale of accused CD-ROM controllers are licensed by complainant Oak. On May 12, 1999, the ALJ issued his final ID in which he found that there is no violation of section 337 of the Tariff Act of 1930 in the instant investigation. The Commission has extended the deadline for determining whether to review Order No. 15 to coincide with the deadline (June 28, 1999) for determining whether to review the ALJ's final ID.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337, and section 210.42(h)(3) of the Commission Rules of Practice and Procedure, 19 C.F.R. § 210.42(h)(3).

Copies of the nonconfidential versions of Order No. 15, the final ID, and all other documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205–2000.

By order of the Commission.

Issued: May 21, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–13374 Filed 5–25–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–825–826 (Preliminary)]

Certain Polyester Staple Fiber From Korea and Taiwan

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Korea and Taiwan of certain polyester staple fiber, provided for in subheading 5503.20.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Commencement of Final Phase Investigations

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling that will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules upon notice from the Department of Commerce of affirmative preliminary determinations in the investigations under section 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Background

On April 2, 1999, a petition was filed with the Commission and the Department of Commerce by E.I. DuPont de Nemours, Wilmington, DE; Arteva Specialities, S.a.r.l. d/b/a KoSa, Spartanburg, SC; NanYa Plastics Corp., America, Lake City, SC; Wellman, Inc., Shrewsbury, NJ; and Intercontinental Polymers, Inc., Charlotte, NC alleging that an industry in the United States is materially injured by reason of LTFV imports of polyester staple fiber from Korea and Taiwan.[2] Accordingly, effective April 2, 1999, the Commission instituted antidumping investigations Nos. 731–TA–825–826 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of April 9, 1999 (64 F.R. 17414). The conference was held in Washington, DC, on April 22, 1999, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on May 14, 1999. The views of the Commission are contained in USITC Publication 3197 (May, 1999), entitled Certain Polyester Staple Fiber from Korea and Taiwan: Investigations Nos. 731–TA–825–826 (Preliminary).

By order of the Commission.

Issued: May 18, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–13375 Filed 5–25–99; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

[2] NanYa Plastics was not a petitioner in the investigation involving Taiwan. In a letter dated May 4, 1999, NanYa Plastics also withdrew as a petitioner in the investigation involving Korea. In the same letter, DuPont withdrew as a petitioner in the investigation involving Taiwan.

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–781–786 (Final)]

Stainless Steel Round Wire From Canada, India, Japan, The Republic of Korea, Spain, and Taiwan

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission unanimously determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act), that an industry in the United States is not

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from Canada, India, Japan, Korea, Spain, and Taiwan of stainless steel round wire[2] that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted these investigations effective November 16, 1998, following receipt of a petition filed with the Commission and the Department of Commerce by ACS Industries, Inc., Woonsocket, RI; Al Tech Specialty Steel Corp., Dunkirk, NY; Branford Wire & Manufacturing Co., Mountain Home, NC; Carpenter Technology Corp., Reading, PA; Handy & Harman Specialty Wire Group, Cockeysville, MD; Industrial Alloys, Inc., Pomona, CA; Loos & Co., Inc., Pomfret, CT; Sandvik Steel Co., Clarks Summit, PA; Sumiden Wire Products Corp., Dickson, TN; and Techalloy Co., Inc., Mahwah, NJ. The final phase of these investigations was scheduled by the Commission following notification of preliminary determinations by the Department of Commerce that imports of stainless steel round wire from Canada, India, Japan, Korea, Spain, and Taiwan were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. § 1673b(b)). Notice of the scheduling of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of December 2, 1998 (63 FR 66577). The hearing was held in Washington, DC, on April 6, 1999, and all persons who requested the opportunity were permitted to appear in person or by counsel.

[2] For purposes of these investigations, Commerce has defined the subject stainless steel round wire (SSRW) as ''any cold-formed (*i.e.*, cold-drawn, cold-rolled) stainless steel product of a cylindrical contour, sold in coils or spools, and not over 0.703 inch (18 mm) in maximum solid cross-sectional dimension. SSRW is made of iron-based alloys containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. Metallic coatings, such as nickel and copper coatings, may be applied.'' (*See* e.g., Final Determination of Sales at Less Than Fair Value—Stainless Steel Round Wire from Japan (64 FR 17318, Apr. 9, 1999.)

These products, if imported are currently covered by statistical reporting numbers 7223.00.1015, 7223.00.1030, 7223.00.1045, 7223.00.1060, and 7223.00.1075 of the Harmonized Tariff Schedule of the United States (HTS).

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on May 18, 1999. The views of the Commission are contained in USITC Publication 3194 (May 1999), entitled Stainless Steel Round Wire from Canada, India, Japan, Korea, Spain, and Taiwan: Investigations Nos. 731–TA–781–786 (Final).

Issued: May 19, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–13373 Filed 5–25–99; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Lodging of Consent Decrees Under the Comprehensive Environmental Response, Compensation and Liability Act 42 U.S.C. 9601, et seq.

Notice is hereby given that on May 14, 1999 two proposed Consent Decrees (''Decrees'') in *United States* v. *Gencorp, Inc., et al* Civil Action No. 5:89–CV–1866, were lodged with the United States District Court for the Northern District of Ohio. The United States filed this action pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9601, *et seq.*, seeking (i) reimbursement of costs incurred in response to the release or threat of release of hazardous substances from the Fields Brook Superfund Site in Ashtabula, Ohio; and (ii) recovery of damages for injury to, destruction of, or loss of natural resources at the Site.

The proposed Consent Decrees resolve certain claims against: Ashta Chemicals, Inc.; Archer Daniels Midland Company (ADM); Bee Jay Excavating, Inc. (f/k/a/ Brenkus Excavating, Inc.); C.H. Heist Corp.; Cabot Corporation; Consolidated Rail Corporation; Detrex Corporation; Elkem Metals Company L.P.; First Energy Corp.; GenCorp Inc.; Greenleaf Motor Express, Inc.; Koski Construction Co.; Luntz Services Corporation (f/k/a Luntz Corporation); Mallinckrodt, Inc. (f/k/a International Minerals and Chemicals Corporation); Millennium Inorganic Chemicals, Inc. (f/k/a SCM Corporation and SCM Chemicals Inc.); Millennium Petrochemicals, Inc.; Motta's Body & Frame Shop, Inc.; Occidental Chemical Corporation; Ohio Power Company; Olin Corporation; Plasticolors, Inc.; Reserve Environmental Services Inc.; RMI Titanium Company; The Sherwin-Williams Company; Union Carbide Corporation; and Viacom International (f/k/a Paramount Communications Inc.).

The proposed Consent Decrees would resolve claims asserted by the United States under Sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, against 26 current or former owners or operators of industrial facilities from which there have been releases or threatened releases of hazardous substances at the Fields Brook site (the ''Site'') in Ashtabula, Ohio. The Decrees also resolve claims asserted and that could have been asserted against certain Federal Agencies that owned or operated facilities at the Site.

Pursuant to the first proposed consent decrees (the ''RD/RA Decree''), a group of Settling Defendants will implement EPA's selected remedies for two operable units, known as the Sediment Operable Unit (SOU) and the Floodplains/Wetlands Area Operable Unit (FWA). The estimated cost of this remaining Site work is approximately $30 million. In addition, this consent decrees provide for various Settling Defendants and Settling Federal Agencies to pay all costs to be incurred by EPA in overseeing implementation of the SOU and FWA work (estimated at $1 million), and to pay approximately $2.4 million in unreimbursed response costs of the United States at this Site. This proposed decree also provides for recovery of $840,000 in damages for injuries to natural resources at the Site.

The second proposed consent decree will settle the claims asserted against ADM at the Site. Pursuant to this decree (the ''ADM Decree''), ADM will pay $700,000 in unreimbursed response costs of the United States at the Site and the recovery of $10,000 in damages for injury to natural resources at the Site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Decrees. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to, *United States* v. *GenCorp Inc. et al*, Civil Action No. 5:89–CV–1866 and D.J. Ref. #90–11–2–210A and 90–11–2–210C.

The Decrees may be examined at the United States Department of Justice, Environment and Natural Resources Division, Denver Field Office, 999 18th Street, North Tower Suite 945, Denver, Colorado, 80202 and U.S. EPA Region V, 77 West Jackson Boulevard, Chicago, IL 60604 and at the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the Decrees may be obtained in person or by mail from the

Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005. In requesting a copy, please enclose a check in the amount of $30.75 for the RD/RA Decree without appendices; $119.75 for the RD/RA Decree with appendices; $7 for the ADM Decree without appendices; and $12.00 for the ADM Decree with appendices (25 cents per page reproduction cost) payable to the Consent Decree Library. please specify which Decree, with or without appendices, you would like.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–13402 Filed 5–25–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Capstar Broadcasting Corporation and Triathlon Broadcasting Company; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. Section 16(b) through (h), that a proposed Final Judgment, Stipulation and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America* v. *Capstar Broadcasting Corporation and Triathlon Broadcasting Company,* Civil Action No. 99–CV00993. On April 21, 1999, the United States filed a Complaint alleging that the proposed acquisition by Capstar Broadcasting Corporation (''Capstar'') of the radio assets of Triathlon Broadcasting Company (''Triathlon'') in Wichita, Kansas, would violate Section 7 of the Clayton Act, 15 U.S.C. § 18. The proposed Final Judgment, filed the same time as the Complaint, requires Capstar to divest five radio stations in Wichita pursuant to the Final Judgment. Copies of the Complaint, proposed Final Judgment and Competitive Impact Statement are available for inspection at the Department of Justice in Washington, D.C. in Room 215, 325 Seventh Street, N.W., and at the Office of the Clerk of the United States District Court for the District of the District of Columbia.

Public comment is invited within 60 days of the date of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to Craig W. Conrath, Chief, Merger Task Force, Antitrust Division, Department of Justice, 1401 H St. N.W., Suite 4000, Washington, D.C. 20530 (telephone: (202) 307–0001).

Constance K. Robinson,

Director of Operations & Merger Enforcement.

United States District Court for the District of Columbia

United States of America, Plaintiff, v. *Capstar Broadcasting Corporation, and Triathlon Broadcasting Company,* Defendants.

Civil Action No. 99–CV–00993 (Judge Oberdorfer).

Competitive Impact Statement

The United States, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (''APPA''), 15 U.S.C. § 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

The plaintiff filed a civil antitrust Complaint on April 21, 1999, alleging that Capstar Broadcasting Corporation's (''Capstar'') proposed acquisition of Triathlon Broadcasting Company (''Triathlon'') would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18. The Compliant alleges that Capstar and Triathlon both own and operate radio stations throughout the United States, and that they each own and operate radio stations in the Wichita, Kansas, metropolitan area. Specifically, the complaint alleges that Capstar owns KKRD–FM, KRZZ–FM, and KNSS–AM in Wichita and that Capstar controls approximately 20 percent of the Wichita radio advertising market. The complaint also alleges that Triathlon owns KZSN–FM, KRBB–FM, KEYN–FM, KWSY–FM, KFH–AM, and KQAM–FM in Wichita and controls approximately 33 percent of the radio advertising revenues in the Wichita radio advertising market. The proposed acquisition would give Capstar a significant share of the radio advertising market in Wichita and control over stations that are close substitutes for each other based upon their specific audience characteristics. According to industry estimates, the proposed acquisition would give Capstar control of over 45 percent of the radio advertising revenue—even after Capstar divests the two lowest ranked FM radio stations pursuant to Federal Communications Commission (''FCC'') regulations. As a result, the combination would substantially lessen competition in the sale of radio advertising time in the Wichita metropolitan area.

The prayer for relief seeks: (a) adjudication that Capstar's proposed acquisition of Triathlon described in the Complaint would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18; (b) preliminary and permanent injunctive relief preventing the consummation of the proposed acquisition; (c) an award to the United States of the costs of this action; and (d) such other relief as is proper.

Before this suit was filed, the United States reached a proposed settlement with Capstar and Triathlon which is memorialized in the Stipulation and proposed Final Judgment which have been filed with the Court. Under the terms of the proposed Final Judgment, Capstar must divest five stations—KEYN–FM, KWSJ–FM, KFH–AM, KNSS–AM and KQAM–AM—to another radio operator approved by plaintiff at the time it acquires Triathlon. If Capstar does not divest these stations to an approved buyer at the time it acquires Triathlon, Capstar must place the stations in an FCC Trust. The FCC Trust Agreement was filed with the Court as an attachment to the proposed Final Judgment. Unless the Antitrust Division of the United States Department of Justice (the ''Antitrust Division'') grants an extension, the Trustee must divest the stations to a buyer approved by the Antitrust Division at its sole discretion within four (4) months of the date of entry of the Final Judgment.

The proposed Final Judgment also requires both Capstar and Triathlon to ensure, to the extent they are able under the proposed Final Judgment, that these stations will be operated independently as viable ongoing businesses while Capstar and Triathlon continue to operate them. If the stations are transferred to the Trustee, the Trustee has agreed that he will operate the stations independently as viable ongoing businesses. Further, the proposed Final Judgment requires Capstar to give plaintiff prior notice regarding future radio station acquisitions or certain agreements pertaining to the sale of broadcast radio advertising time in Wichita.

The plaintiff and defendants have stipulated that the proposed Final Judgment may be entered after compliance with APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment, and to punish violations thereof.

II. The Alleged Violation

A. The Defendants

Capstar is a Delaware corporation with its headquarters in Austin, Texas.

Capstar owns approximately 309 radio stations in 76 U.S. markets. In 1997, Capstar had total revenue of approximately $350 million, approximately $4.9 million of which was derived from its Wichita stations.

Triathlon is a Delaware corporation headquartered in San Diego, California. Triathlon currently owns 31 radio stations in six U.S. markets. In 1997, Triathlon had total revenue of approximately $33.6 million, approximately $8 million of which was derived from its Wichita stations.

B. Description of the Events Giving Rise to the Alleged Violation

On July 23, 1998, Capstar and Triathlon entered into an Agreement and Plan of Merger (''Agreement''). Under the terms of the Agreement, Triathlon agreed to transfer its licensee companies, including Triathlon Broadcasting of Wichita Licensee, Inc. to Capstar. Also under the terms of the Agreement, Triathlon agreed to sell Triathlon Broadcasting Company to Capstar.

Capstar and Triathlon compete for the business of local and national companies seeking to advertise in the Wichita radio market. The proposed acquisition of Triathlon and Capstar, and the threatened loss of competition that would be caused thereby precipitated the government suit.

C. Anticompetitive Consequences of the Proposed Acquisition

1. The Sale of Radio Advertising Time in Wichita

The Complaint alleges that the provision of advertising time on radio stations serving the Wichita, Kansas Metropolitan Survey Area (''MSA'') constitutes a line of commerce and a section of the country, or a relevant market, for antitrust purposes. The Wichita MSA is the geographical unit for which Arbitron furnishes radio stations, advertising agencies, and advertisers with data to aid in evaluating radio audience size and composition. Advertisers use this data in making decisions about which radio station or combination of radio stations can deliver their target audiences in the most efficient and cost-effective way. The Wichita MSA includes Butler, Harvey, and Sedgwick Counties. Radio stations earn their revenues from the sale of advertising time to local and national advertisers. Many local and national advertisers purchase radio advertising time in Wichita because they find such advertising preferable to advertising in other media for their specific needs. For such advertisers, radio time (a) may be less expensive and more cost-efficient than other media at reaching the advertiser's target audience (individuals most likely to purchase the advertiser's products or services); (b) may reach certain target audiences that cannot be reached as effectively through other media; or (c) may render certain services or offer promotional opportunities to advertisers that they cannot exploit as effectively using other media. For these and other reasons, many local and national advertisers in Wichita who purchase radio advertising time view radio either as a necessary advertising medium for them or as a necessary advertising complement to other media.

Although some local and national advertisers may switch some of their advertising to other media rather than absorb a price increase in radio advertising time in Wichita, the existence of such advertisers would not prevent radio stations from raising their prices a small but significant amount. At a minimum, stations could raise prices profitably to those advertisers who view radio either as a necessary advertising medium for them, or as a necessary advertising complement to other media. Radio stations, which negotiate prices individually with advertisers, can identify those advertisers with strong radio preferences. Consequently, radio stations can charge different advertisers different rates. Because of this ability to price discriminate among different customers, radio stations may charge higher rates to advertisers that view radio as particularly effective for their needs, while maintaining lower rates for other advertisers.

2. Harm to Competition

The Complaint alleges that Capstar's proposed acquisition of Triathlon would lessen competition substantially in the provision of radio advertising time in the Wichita MSA. The proposed transaction would create further market concentration in an already concentrated market. Using a measure of market concentration called the Herfindahl-Hirschman Index (''HHI''), explained in Appendix A of the Complaint, a combination of Capstar and Triathlon would substantially increase the concentration in the Wichita radio advertising markets. The HHI currently is 3040. If Capstar divests only the two least significant FM stations, Capstar's share of the Wichita radio market, based on advertising revenue, would increase from approximately 20 percent to approximately 45 percent. The approximate post-merger HHI would be 3680, representing an increase of about 640 points. This substantial increase in concentration is likely to give Capstar unilateral power to raise advertising rates and reduce the level of service provided to advertisers in Wichita.

Today, several Capstar and Triathlon stations in Wichita compete head-to-head to reach the same audiences and, for many local and national advertisers buying time in Wichita, they are close substitutes for each other based on their specific audience characteristics. The proposed merger would eliminate this competition.

During individual price negotiations between advertisers and radio stations, advertisers provide the stations with information about their advertising needs, including their target audience and the desired frequency and timing of ads. Radio stations thus have the ability to charge advertisers differing rates based in part on the number and attractiveness of competitive radio stations that can meet a particular advertiser's specific target needs.

During individualized rate negotiations, advertisers that desire to reach certain listeners can help ensure competitive rates by ''playing off'' Capstar stations against Triathlon stations. Capstar's acquisition of Triathlon will end this competition. After the acquisition, such advertisers will be unable to reach their desired audiences with equivalent efficiency without using Capstar stations. Because advertisers seeking to reach these audiences would have inferior alternatives to the merged entity as a result of the acquisition,the acquisition would give Capstar the ability to raise prices and reduce the quality of its service to some advertisers on its stations in Wichita.

b. Advertisers could not turn to other Wichita radio Stations to prevent Capstar from imposing an anticompetitive price increase.—If Capstar raised prices or lowered services to those advertisers who buy advertising time on Capstar and Triathlon stations in Wichita because of their strength in delivering access to certain audiences, non-Capstar radio stations in Wichita would not be induced to change their formats to attract those audiences in sufficiently large numbers to defeat a price increase. Successful radio stations are unlikely to undertake a format change solely in response to small but significant increases in price being charged to advertisers by a multi-station firm such as Capstar because they would likely lose a substantial portion of their existing audiences. Even if less successful stations did change format, they would still be unlikely to attract

enough listeners to provide suitable alternatives to the merged entity. In addition, new entry into the Wichita radio advertising market would not be timely, likely or sufficient to deter the exercise of market power. For all these reasons, plaintiff concludes that the proposed transactions would lessen competition substantially in the sale of the radio advertising time on radio stations serving the Wichita MSA in violation of Section 7 of the Clayton Act.

III. Explanation of the Proposed Final Judgment

The proposed Final Judgment would preserve competition in the sale of radio advertising time in Wichita. It requires Capstar to divest five stations: KEYN–FM, KWSJ–FM, KFH–AM, KNSS–AM and KQAM–AM. The relief will reduce the share in advertising revenues Capstar would have achieved in the transaction from 45 percent to less than 40 percent. The divestitures will preserve choices for advertisers and will ensure that radio advertising prices do not increase and services do not decline as a result of the transaction.

Capstar must divest KEYN–FM, KWSJ–FM, KFH–AM, KNSS–AM and KQAM–AM assets to either another buyer or a Trustee at the time it acquires Triathlon. The divestitures must be to a purchaser or purchasers acceptable to the plaintiff in its sole discretion. Except in the case of KNSS–AM, the divestitures shall include all the assets of the stations being divested. The divestitures shall be accomplished in such a way as to satisfy plaintiff, in its sole discretion, that such assets can and will be used as viable, ongoing commercial radio businesses. If defendants fail to divest these stations within the time periods specified in the Final Judgment, a Trustee agreed upon by plaintiff and Defendants and identified in the Final Judgment will be entrusted to effect the divestitures. If the Trustee is appointed, the proposed Final Judgment provides that Capstar will pay all costs and expenses of the Trustee and any professionals and agents retained by the Trustee. After appointment, the Trustee will file monthly reports with the plaintiff, Capstar and the Court, setting forth the Trustee's efforts to accomplish the divestitures ordered under the proposed Final Judgment. If the Trustee has not accomplished the divestitures within four (4) months after the date of the Order's entry, the Trustee shall promptly file with the Court a report setting forth (1) the Trustee's efforts to accomplish the required divestitures, (2) the reasons, in the Trustee's judgment, why the required divestitures have not been accomplished and (3) the Trustee's recommendations. At the same time the Trustee will furnish such report to the plaintiff and defendants, who will each have the right to be heard and to make additional recommendations.

The proposed Final Judgment requires that prior to the consummation of the transaction, defendants will maintain the independence of their respective radio stations in Wichita until the closing of the merger and the transfer of KEYN–FM, KWSJ–FM, KFH–AM, KNSS–AM and KQAM–AM to either a buyer approved by the plaintiff or to the Trustee.

The proposed Final Judgment also prohibits Capstar from entering into certain agreements with other Wichita radio stations without providing at least thirty (30) days' notice of the plaintiff. Specifically, Capstar must notify the plaintiff before acquiring any interest in another Wichita radio station. Such acquisitions could raise competitive concerns but might be too small to be reported otherwise under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. § 18a (the ''HSR Act''). Moreover, Capstar may not agree to sell radio advertising time for any other Wichita radio station, or to have another radio station that also sells radio advertising time in Wichita sell its radio advertising time, without providing plaintiff with notice. In particular, the provision requires Capstar to notify the plaintiff before it enters into any Joint Sales Agreements (''JSAs'') in Wichita. Under a JSA, one station sells another station's advertising time. Despite their clear competitive significance, JSAs may not all be reportable to the Department under the HSR Act. Thus, this provision in the proposed Final Judgment ensures that the plaintiff will receive notice of and be able to act, if appropriate, to stop any agreements that might have anticompetitive effects in the Wichita radio advertising market.

The relief in the proposed Final Judgment is intended to remedy the likely anticompetitive effects of Capstar's proposed transaction with Triathlon in Wichita. Nothing in this Final Judgment is intended to limit the plaintiff's ability to investigate or to bring actions, where appropriate, challenging other past or future activities of defendants in Wichita, or any other markets.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. § 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. § 16(a), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

The plaintiff and the defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The plaintiff will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to its entry. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**.

Any such written comments should be submitted to: Craig W. Conrath, Chief, Merger Task Force, Antitrust Division, United States Department of Justice, 1401 H Street, NW, Suite 4000, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

The plaintiff considered, as an alternative to the proposed Final Judgment, a full trial on the merits of its Complaint against defendants. The plaintiff is satisfied, however, that the

divestiture of KEYN–FM, KWSJ–FM, KFH–AM, KNSS–AM and KQAM–AM and other relief contained in the proposed Final Judgment will preserve viable competition in the sale of radio advertising time in the Wichita radio advertising markets. Thus, the proposed Final Judgment would achieve the relief the plaintiff would have obtained through litigation, but avoids the time, expense and uncertainty of a full trial on the merits of the Complaint.

VII. Standard of Review Under the APPA for Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty (60) day comment period, after which the court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' In making that determination, the Court may consider—

(1) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;

(2) the impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

10 U.S.C. § 16(e).

As the United States Court of Appeals for the District of Columbia Circuit held, this statute permits to court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the plaintiff's Complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See United States* v. *Microsoft Corp.*, 56 F.3d 1448, 1461–62 (D.C. Cir. 1995).

In conducting this inquiry, ''[t]he Court is nowhere compelling to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' [1] Rather,

[a]bsent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. *Mid-America Dairymen, Inc.*, 1977–1 Trade Cas. ¶ 61,508, at 71,980 (W.D. Mo. 1977).

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988) *(citing United States* v. *Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft*, 56 F.3d at 1460–62. Precedent requires that

the balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is *''within the reaches of the public interest.''* More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.[2]

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' '' [3]

This is strong and effective relief that should fully address the competitive harm posed by the proposed transaction.

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the plaintiff in formulating the proposed Final Judgment.

Dated: May 12, 1999.

Respectfully submitted,

Karl D. Knutsen,

Attorney, Merger Task Force.

U.S. Department of Justice, Antitrust Division

1401 H Street, N.W., Washington, D.C. 20530, (202) 514–0976.

Certificate of Service

I, Karl D. Knutsen, of the Antitrust Division of the United States Department of Justice, do hereby certify that true copies of the foregoing Competitive Impact Statement were served this 12th day of May, 1999, by United States mail, to the following:

David J. Laing, Baker & McKenzie,

815 Connecticut Ave. N.W., Washington, D.C. 20006.

Counsel for Triathlon Broadcasting Company.

Neil W. Imus, Vinson & Elkins,

1455 Pennsylvania Avenue, N.W., Washington, D.C. 20006.

Counsel for Capstar Broadcasting Corporation.

Karl D. Knutsen

[FR Doc. 99–13403 Filed 5–25–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Advanced Lead-Acid Battery Consortium (''ALABC'')

Notice is hereby given that, on April 8, 1999, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Advanced Lead-Acid Battery Consortium (''ALABC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notification were filed for purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Borregaard Lignotech, Sharpsborg, Norway; and Eskom,

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[1] 119 Cong. Rec. 24598 (1973). *See United States* v. *Gillette Co.*, 406 F. Supp. 713, 715 (D. Mass. 1975. A ''public interest'' determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. § 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. *See* H.R. Rep. 93–1463, 93rd Cong. 2d Sess. 8–9 (1974), *reprinted in* U.S.C.C.A.N. 6535, 6538.

[2] *Bechtel*, 648 F.2d at 666 (citations omitted) (emphasis added); *See BNS*, 858 F.2d at 463; *United States* v. *National Broad. Co.*, 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); *Gillette*, 406 F. Supp. at 716. *see also Microsoft*, 56 F.2d at 1461 (whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest' '') (citations omitted).

[3] *United States* v. *American Tel. and Tel Co.*, 552 F. Supp. 131, 151 (D.D.C. 1982), *aff'd. sub nom. Maryland* v. *United States*, 460 U.S. 1001 (1983) (*quoting Gillette Co.*, 406 F. Supp. at 716 (citations omitted)); *United States* v. *Alcan Aluminum, Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985).

Johannesburg, South Africa have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Advanced Lead-Acid Battery Consortium (''ALABC'') intends to file additional written notification disclosing all changes in membership.

On June 15, 1992, Advanced Lead-Acid Battery Consortium (''ALABC'') filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on July 29, 1992 (57 FR 33522–02).

The last notification was filed with the Department on January 11, 1999. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on February 18, 1999 (64 FR 8123–02).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 99–13289 Filed 5–25–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Aluminum Metal Matrix Composites (AIMMC) Consortium

Notice is hereby given that, on February 16, 1999, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Aluminum Metal Matrix Composites (AIMMC) Consortium Joint Venture has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, ART, Inc., Buffalo, NY; IAMS, Cincinnati, OH; INCO Technical Services, Ltd., Ontario, CANADA; and Raytheon Company, Dallas, TX have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Aluminum Metal Matrix Composites (AIMMC) Consortium Joint Venture intends to file additional written notification disclosing all changes in membership.

On December 15, 1997, Aluminum Metal Matrix Composites (AIMMC) Consortium Joint Venture filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on February 12, 1998 (63 FR 7180–02).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 99–13273 Filed 5–25–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Auto Body Consortium, Inc.—''Hot Metal Gas Forming''

Notice is hereby given that, on March 5, 1999, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Auto Body Consortium, Inc.—''Hot Metal Gas Forming'' has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Reynolds Metals Company, Chester, VA; and Troy Design and Manufacturing, Medford, MI have been added as parties to this venture. Also, the following members have changed their names: Chrysler Corporation to DaimlerChrysler, Madison Heights, MI and Rockwell Automation to Allen-Bradley Company LLC, Milwaukee, WI.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Auto Body Consortium, Inc.—''Hot Metal Gas Forming'' intends to file additional written notification disclosing all changes in membership.

On December 21, 1998, Auto Body Consortium, Inc.—''Hot Metal Gas Forming'' filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on February 18, 1999 (64 FR 8124).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 99–13282 Filed 5–25–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Commerce One, Inc.

Notice is hereby given that, on March 11, 1999, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et. seq.* (''the Act''), Commerce One has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Veo Systems, Inc., Mountain View, CA was acquired by Commerce One, Inc., Walnut Creek, CA.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Commerce One, Inc. intends to file additional written notification disclosing all changes in membership.

On October 7, 1997, Commerce One, Inc., filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on January 29, 1999 (64 FR 4705).

The last notification was filed with the Department on September 18, 1998. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on January 29, 1999 (64 FR 4705).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 99–13287 Filed 5–25–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Commercenet Consortium

Notice is hereby given that, on March 31, 1999, pursuant to Section 6(a) of the

National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), CommerceNet Consortium has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, DHL Airways, Redwood City, CA and Ogilvy One Worldwide, New York, NY have joined the Consortium as Portfolio members. Softshare, Santa Barbara, CA has joined the Consortium as a Core member. Also, Pandesic, LLC, Sunnyvale, CA; and Able Solutions, Battleground, WA have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and CommerceNet Consortium intends to file additional written notification disclosing all changes in membership.

On June 13, 1994, CommerceNet Consortium filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on August 31, 1994 (59 FR 45012).

The last notification was filed with the Department on February 22, 1999. A notice has not yet been published in the **Federal Register**.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 99–13281 Filed 5–25–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—The Dow Chemical Company (''DOW''): Ultra-Low Dielectric Constant Materials for Integrated Circuit Interconnects

Notice is hereby given that, on March 2, 1999, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), The Dow Chemical Company (''DOW''): Ultra-Low Dielectric Constant Materials for Integrated Circuit Interconnects has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are The Dow Chemical Company, Midland, MI; and International Business Machines Corp., San Jose, CA. The nature and objectives of the venture are to engage in research and development of materials and methods for producing ultra-low dielectric constant materials for use as interlayer dielectrics for integrated circuit interconnects.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 99–13285 Filed 5–25–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant To the National Cooperative Research and Production Act of 1993—Financial Services Technology Consortium, Inc.

Notice is hereby given that, on March 31, 1999, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Financial Services Technology Consortium, Inc. (Consortium) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Data Treasury Corporation, Lloyd Harbor, NY has joined the Consortium as an associate member. Also, TRW, Fairfax, VA; CU Cooperative, Pomona, CA; and Columbia University, New York, NY have been dropped as parties to this venture.

No other changes have been made in the membership of this venture. Membership in this group research project remains open, and Financial Services Technology Consortium Inc. intends to file additional written notification disclosing all changes in membership.

On October 21, 1993, Financial Services Technology Consortium Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on December 14, 1993 (58 FR 65399).

The last notification was filed with the Department on December 31, 1998. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on March 19, 1999 (64 FR 13602).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 99–13280 Filed 5–25–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—The Frame Relay Forum

Notice is hereby given that, on February 4, 1999, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), The Frame Relay Forum has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Cyras Systems, Fremont, CA; Larscom, Milpitas, CA; Maker Communications, Framingham, MA; Next Level Communications, Rohnert Park, CA and Secant Network Technologies, Morrisville, NC have joined as worldwide members. Infinitec Communications, Tulsa, OK and Midwest Information Systems, Maryland Heights, MO have joined as auditing members. CS Telcom, Cedex, FRANCE has upgraded to worldwide membership. The following member has changed its name: TxPort to Verilink, Madison, AL. Also, CompuServe, Columbus, OH; MICOM Communications, Simi Valley, CA; DSC Communications, Plano, TX and FastComm Communications, Sterling, VA have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and The Frame Relay Forum intends to file additional written notification disclosing all changes in membership.

On April 10, 1992, The Frame Relay Forum filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to

Section 6(b) of the Act on July 2, 1992 (57 FR 29537).

The last notification was filed with the Department on October 9, 1998. A notice was published on the **Federal Register** pursuant to Section 6(b) of the Act on January 29, 1999 (64 FR 4706).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 99–13277 Filed 5–25–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—HDTV Broadcasting Technology Consortium

Notice is hereby given that, on March 11, 1999, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), HDTV Broadcasting Technology Consortium has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, New Jersey Public Broadcasting Authority, Trenton, NJ; and Wegener Communications, Duluth, GA have been added as parties to this venture. Also, Philips Laboratories, Briarcliff Manor, NY; MCI Telecommunications, Richardson, TX; and Sun Microsystems Federal, Inc., Mountain View, CA have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and HDTV Broadcasting Technology Consortium intends to file additional written notification disclosing all changes in membership.

On September 11, 1995, HDTV Broadcasting Technology Consortium filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on December 13, 1995 (60 FR 64079).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 99–13278 Filed 5–25–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Innovative Membrane Systems, Inc.

Notice is hereby given that, on February 19, 1999, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Innovative Membrane Systems, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identifies of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identifies of the parties are Praxair, Inc., Danbury, CT; Walter Juda Associates, c/o Tufts University, Medford, MA; and Tufts University, Department of Chemical Engineering, Medford, MA. The nature and objectives of the venture are to develop and demonstrate high temperature hydrogen separation membranes.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 99–13274 Filed 5–25–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Microcoating Technologies, Inc./Solarex, Inc.

Notice is hereby given that, on February 25, 1999, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* (''the Act''), MicroCoating Technologies, Inc./ Solarex, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture.The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are MicroCoating Technologies, Inc., Chamblee, GA; and Solarex, Inc., Toano, VA. The nature and objectives of the venture are to develop and demonstrate a dramatically lower cost manufacturing method for high quality photovoltaic solar cells based on MCT's CCVD process.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 99–13272 Filed 5–25–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Microelectronics and Computer Technology Corporation

Notice is hereby given that, on February 11, 1999, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Microelectronics and Computer Technology Corporation (''MCC'') has filed written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Mobil Technology Company, Fairfax, VA has joined MCC as an associate member. Rafael, Haisa, Israel has joined MCC as a foreign associate member. Telefonica, Madrid, Spain has joined MCC as a foreign project participant. Eastman Kodak, Rochester, NY has joined the MeMs project and the PACE project. Motorola, Schaumburg, IL has joined the PACE Project and the SSEP Project. 3M, Austin, TX; Nokia, Helsinki, Finland; and Hewlett-Packard, Palo Alto, CA have joined the PACE project. Lockheed Martin, Orlando, FL; and NCR, Dayton, OH have joined the SSEP Project. Nortel Networks, Ottowa, CA has joined the MeMs Project. SAIC, LaJolla, CA and Rafael, Haisa, Israel have joined the Infosleuth 2 Project. Telefonica, Madrid, Spain has joined the I3S project. Also, Advanced Analytic Tools, Langley, VA; (The) Boeing Company, Seattle, WA; DOD Clinical Business Area, Arlington, VA; Tandem Computers, Inc., Cupertino, CA; and VLSI, San Jose, CA have been dropped as parties to this venture. The Object Infrastructure Project has been terminated.

No other changes have been made in either the membership or planned activity of the group research project.

Membership in this group research project remains open, and Microelectronics and Computer Technology Corporation intends to file additional written notification disclosing all changes in membership.

On December 21, 1984, Microelectronics and Computer Technology Corporation filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on January 17, 1985 (50 FR 2633).

The last notification was filed with the Department on August 28, 1998. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on December 30, 1998 (64 FR 71955).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 99–13286 Filed 5–25–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Multiservice Switching Form (''MSF'')

Notice is hereby given that, on January 22, 1999, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Multiservice Switching Forum (''MSF'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identifies of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are 3Com, Westborough, MA; AT&T, San Jose, CA; Abrizio, Inc., Mountain View, CA; Alcatel, Plano, TX; Ascend Communications, Westford, MA; British Telecom, Ipswick, Suffolk, United Kingdom; Bellcore, Morristown, NJ; Bellsouth, Atlanta, GA; Cisco Systems, San Jose, CA; cplane Inc., Menlo Park, CA; ECI Telecom, Petah Tikva, ISRAEL; FORE Systems, Warrendale, PA; Fujitsu Network Communications, Raleigh, NC; Harris & Jeffries, Dedham, MA; Hitachi Telecom, Norcross, GA; LM Ericsson, Stockholm, Sweden; Lucent Technologies, Murray Hill, NJ; MCIWorldCom, Richardson, TX; NEC America, Irving, TX; NetCore Systems, Wilmington, MA; Newbridge Networks, Kanata, Ontario, Canada; Nexabit Networks, Marlborough, MA; Nortel Networks, Nepean, Ontario, CANADA; SBC Technology Resources, Austin, TX; Sentient Networks, Milpitas, CA; Siemens, Boca Raton, FL; Telecom Italia, Rome, Italy; Telia AB, Farsta, Sweden; and USWest, Boulder, CO. The nature and objectives of the venture are to support the rapid advancement of an efficient and compatible technology base that promotes a competitive switching system technology; promoting worldwide compatibility and interoperability; encouraging input to appropriate national and international standards bodies; and identifying, selecting, augmenting as appropriate, and publishing multiservice switching system implementation agreements drawn from appropriate national and international standards; conducting cooperative research; developing proposals to be made to appropriate national and international standards bodies in order to further compatibility and interoperatability; developing publications and information materials; and performing other activities permitted under MSF's Bylaws in furtherance of the purpose and objects of MSF.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 99–13295 Filed 5–25–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Center for Manufacturing Sciences, Inc.

Notice is hereby given that, on April 1, 1999, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), National Center for Manufacturing Sciences, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Intelliworxx, Inc., Sarasota, FL; Kestrel Aircraft Company, Norman, OK; UNOVA—Industrial Automation Systems, Cincinnati, OH who has acquired R&B Machine Tool; Ascent Logic Corporation, San Jose, CA; Autotrol Technology Corporation, McLean, VA; Corning Incorporated, Corning, NY; SMART Technologies Inc., Calgary Alberta, CANADA; TRW Broadband Communication Network, Carson, CA; Winco Industries, Inc., Tipp City, OH; Carnegie Mellon Research Institute, Pittsburgh, PA and Original Equipment Suppliers Association, Troy, MI have been added as parties to this venture. Also, R&B Machine Tool, Saline, MI; Cimplex Corporation, San Jose, CA: HPM Consulting Inc., Burlington, Ontario, Canada; ICON Industrial Controls Corporation, Natchitoches, LA; Medar, Inc., Farmington, MI; Monarch Machine Tool, Saline, MI; SpeedFam Corporation, Des Plaines, IL; Steel Products Division (United Defense), Anniston, AL; and The Metal Finishing Suppliers Association, Herndon, VA have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and National Center for Manufacturing Sciences, Inc. intends to file additional written notification disclosing all changes in membership.

On February 20, 1987, National Center for Manufacturing Sciences, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 17, 1987 (52 FR 8375).

The last notification was filed with the Department on January 7, 1999. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on March 19, 1999 (64 FR 13604).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 99–13294 Filed 5–25–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—OBI Consortium

Notice is hereby given that, on February 23, 1999, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), OBI Consortium has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its

membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Concur Technologies, Inc., Redmond, WA; GTE CyberTrust Solutions, Inc., Needham Heights, MA; SATCOM Electronic Commerce Services, Osborne Park, WA AUSTRALIA; Barnes & Noble, New York, NY; DuPont, Wilmington, DE; McMaster-Carr, Elmhurst, IL; McJunkin Corporation, Charleston, WV; Comdisco, Inc., Rosemont, IL; Flint Ink, Ann Arbor, MI; and NTT America, Inc., Mountain View, CA have been added as parties to this venture. Also, SAP, Foster City, CA; First Union National Bank, Charlotte, NC; National Semiconductor, Sunnyvale, CA; and WH Brady, Milwaukee, WI have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and OBI Consortium intends to file additional written notification disclosing all changes in membership.

On September 10, 1997, OBI Consortium filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on November 10, 1997 (62 FR 60531).

The last notification was filed with the Department on December 1, 1998. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on March 19, 1999 (64 FR 13604).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 99–13290 Filed 5–25–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Optical Internetworking Forum (''OIF'')

Notice is hereby given that, on February 25, 1999, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Optical Internetworking Forum (''OIF'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Avici Systems, North Billerica, MA; British Telecommunications, London, United Kingdom; Level 3 Communications, Louisville, CO; NIST, Gaithersburg, MD; Osicom Technologies, Naperville, IL; SDL, San Jose, CA; Silk Road Corporation, San Diego, CA; Terabit Networks, Los Altos, CA have joined OIF as principal members. GiGA, Thousands Oaks, CA; KDD R&D Laboratories, Saitama, Japan; University of Kansas; Lawrence, KS; Viag Interkom GmbH & Co., Munich, Germany; Wandel & Goltermann, Eningen u.A., Germany have been added as auditing members. E.O.S.T., Jerusalem, Israel has changed its name to Chairo Networks. WorldCom, Tulsa, OK: has changed its name to MCI Worldcom. Bay Networks, Santa Clara, CA and Nortel, Ontario, Canada have merged into a new company: Nortel Networks. GPT, Coventry, England and Marconi SpA, Genova, Italy have merged into Marconi Communications. The following have upgraded to principal membership: Furukawa Electric Technologies, Santa Clara, CA; Net Insight, Stockholm, Sweden; Stratum One Communications, Santa Clara, CA. Williams Networks, Tulsa, OK has downgraded to auditing membership.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Optical Internetworking Forum (''OIF'') intends to file additional written notification disclosing all changes in membership.

On October 5, 1998, Optical Internetworking Forum (''OIF'') filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on January 29, 1999 (64 FR 4709).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 99–13288 Filed 5–25–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—The PCAD Venture Team

Notice is hereby given that, on February 10, 1999, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), the PCAD Venture Team (the PCAD Team) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identifies of the parties are Telcordia Technologies, Inc. (formerly Bellcore); Morristown, NJ; Hewlett-Packard, Westlake Village, CA; Rsoft, Ossining, NY; The Trustees of Columbia University in the City of New York, New York, NY; Science Applications International Corporation, McLean, VA; Northern Telecom, Inc., McLean, VA; and SDL, Inc., San Jose, CA. The nature and objectives of the venture is to develop a pioneering multi-level computer simulation environment for photonics that incorporates network level, systems level, and device level modeling and simulation tools.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 99–13291 Filed 5–25–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Petroleum E&P Research Cooperative

Notice is hereby given that, on March 12, 1999, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Petroleum E&P Research Cooperative has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its project status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. The Cooperative intends to undertake the following projects: ''Deepwater Wellbore and Pipeline Thermal Management''—to evaluate the thermal performance of several typical deepwater wellbore and pipeline thermal insulation systems, including vaccum-insulated tubing (VIT), pipe-in-pipe (PIP) flowlines, and bundle

flowlines to provide accurate measurement of the overall heat transfer coefficients (OHTC) and cooldown behaviors of these systems; and ''Effects of Water Cut on Wax Deposition in Deepwater Flowlines''—to determine the effects of water cut on wax deposition in oil flowlines and to investigate wax deposition characteristics in typical oil-water flow patterns using the 4-in, 500-ft long deepwater flow assurance loop at the Texaco Humble Test Facility.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Petroleum E&P Research Cooperative intends to file additional written notification disclosing all changes in membership.

On January 16, 1997, Petroleum E&P Research Cooperative filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on February 13, 1997 (62 FR 6801).

The last notification was filed with the Department on July 14, 1998. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on September 29, 1998 (63 FR 51955).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 99–13284 Filed 5–25–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Southwest Research Institute: Heavy-Duty Diesel Engine Emission Testing to Generate NO_X and PM Correction Factors

Notice is hereby given that, on March 26, 1999, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Southwest Research Institute: Heavy-Duty Diesel Engine Emission Testing to Generate NO_X and PM Correction Factors has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identifies of the parties are Caterpillar Inc., Peoria, IL; Cummins Engine Co., Columbus, IN; Detroit Diesel Corporation, Detroit, MI; Mack Trucks, Inc., Hagerstown, MD; and Volvo Truck Corporation, Gothenburg, Sweden. The nature and objectives of the venture are to develop engine intake air temperature correction factors for NO_X and PM, and humidity correction factors for NO_X, for several on-highway, heavy-duty diesel engines.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 99–13283 Filed 5–25–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Southwest Research Institute (''SWRI''): Advanced Reciprocal Engine Systems (''ARES'')

Notice is hereby given that, on February 9, 1999, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 301 *et seq.* (''the Act''), Southwest Research Institute (''SWRI''): Advanced Reciprocal Engine Systems (''ARES'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are Altronic, Inc., Girard, OH; Caterpillar Inc., Lafayette, IN; Cooper Cameron Corporation, Springfield, OH; Gas Research Institute, Chicago, IL; Southern California Gas Company, Los Angeles, CA; Waukesha Engine Division, Dresser Industries, Inc., Waukesha, WI; and Woodward Governor Company, Industrial Controls Group, Fort Collins, CO. The nature and objectives of the venture are to develop and demonstrate reciprocating engine technology that will enable natural gas engines in power generation application to achieve 50 percent energy conversion efficiency and NO_X emissions of 5 ppm (corrected to 15 percent oxygen) through the identification and understanding of potential techniques and phenomena such as the combustion and knock processes, the use of an expanded cycle (Miller), ignition system development, new materials for exhaust energy retention, improved turbocharging and turbocharger control and exhaust aftertreatment.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 99–13292 Filed 5–25–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Southwest Research Institute: Fuel Filtration Cooperative R&D Program—Phase III

Notice is hereby given that, on March 1, 1999, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4310 *et seq.* (''the Act''), Southwest Research Institute: Fuel Filtration Cooperative R&D Program—Phase III has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are Caterpillar, Inc., Mossville, IL; Champion Laboratories, Inc., West Salem, IL; Donaldson Company, Inc., Minneapolis, MN; and Fleetguard, Inc., Cookeville, TN. The nature and objectives of the Venture are to verify that wear index test rating and actual engine wear rates correlate, improve the current test method to incorporate additional vibration, and to measure and document the filter head accelerations.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 99–13296 Filed 5–25–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Symbian Limited

Notice is hereby given that, on January 22, 1999, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Symbian Limited has filed written

notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Motorola, Inc., Schaumberg, IL has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Symbian Limited intends to file additional written notification disclosing all changes in membership.

On July 21, 1998, Symbian Limited filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on January 28, 1999 (64 FR 4470).

Constance K. Robinson,

Director of Operations Antitrust Division.

[FR Doc. 99–13271 Filed 5–25–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Telemanagement Forum

Notice is hereby given that, on January 12, 1999, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), TeleManagement Forum has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Enterprise Engineering, Fairborn, OH; and Granite Systems, Manchester, NH have been added as Corporate Members. 3Com, Westborough, MA; Consultronics, Budapest, HUNGARY; Cronus Technology, Inc., Schaumburg, IL; Lightera Networks, Cupertino. CA; InterSoft Technologies, Inc., Westford, MA; Mantiss Information Corp., Chicago, IL; Diamond Lane Communications, Petaluma, CA; Amdocs (Israel) Limited, Ra'anana, ISRAEL; Applied Digital Access-Canada, Inc., Burnaby, British Columbia, CANADA; Cheetah Technologies, Brandenton, FL; Sequel Systems, Inc., Richardson, TX; and Tedasys, Inc., Lahti, FINLAND have been added as Associate Members. IIR Limited, Longon, ENGLAND; John E. Watson, Consultant/Developer, Telecom Software Solutions, Morgaton, GA; Anderson & Associates Consulting, Highland Ranch, CO; Corporate Renaissance Inc., Concord, MA; and Telecom Soluciones S.A., Moreno, Piso, Capital Federal, ARGENTINA have been added as Affiliate Members.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and TeleManagement Forum intends to file additional written notification disclosing all changes in membership.

On October 21, 1988, TeleManagement Forum filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on December 8, 1988 (53 FR 49615).

The last notification was filed with the Department on September 23, 1998. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on January 28, 1999 (64 FR 4470).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 99–13276 Filed 5–25–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Telemanagement Forum

Notice is hereby given that, on February 19, 1999, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), TeleManagement Forum has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Nortel Networks, Richardson, TX has been added as a Corporate Member. Gensym Corporation, Cambridge, MA; Astracon, Inc., Englewood, CO; Cramer Systems Ltd., Bath, United Kingdom; Qitel AB, Uppsala, Sweden; RELTEC, Dorval, Quebec, Canada; Telia Network Services, Stockholm, Sweden; and ECI Telekom, Ltd., Petah Tikva, Israel have been added as Associate Members to this venture. Also, Nortel, Richardson, TX; Telia AB, Stockholm, Sweden; and Telematics International, Fort Lauderdale, FL have been dropped as Associate Members to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and TeleManagement Forum intends to file additional written notification disclosing all changes in membership.

On October 21, 1988, TeleManagement Forum filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on December 8, 1988 (53 FR 49615).

The last notification was filed with the Department on January 12, 1999. A notice has not yet been published in the **Federal Register**.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 99–13279 Filed 5–25–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—VSI Alliance

Notice is hereby given that, on February 11, 1999, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), VSI Alliance has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Antrim Design Systems, Inc., Scotts Valley, CA; Analog Circuit Technologies, Inc., San Diego, CA; Arc Cores Ltd., Huntsville, AL; Boulder Creek Engineering, Santa Cruz, CA; CSELT S.p.A. (Centro Studi E Laboratori Telecomunicazioni S.p.A.), Torino, Italy; Fuji Xerox Co., Ltd., Kanagawa, Japan; HCL Technologies India Pvt. Ltd., Nadu, India; Institute of Microelectronics, Singapore; Integrated Technology Express USA, Santa Clara, CA; Neo Linear, Inc., Pittsburgh, PA;

NetLogic Microsystems, Inc., Mountain View, CA; Opmaxx, Inc., Beaverton, OR; Miodrag Potkonjak (individual), Los Angeles, CA; Alberto Sangiovanni-Vincentelli (individual), Berkely, CA; Siemens Microelectronics, Inc., Munich, Germany; Silicon Metrics Corp., Austin, TX; Stellar Semiconductor, San Jose, CA; and TansEDA, Inc., Los Gatos, CA has been added as parties to this venture. Also, Cadworx Consulting, Inc., Milpitas, CA; Denali Software, Inc., Palo Alto, CA; Eigen Tek, Inc., Cherry Hill, NH; Excellent Design, Inc., Kanagawa, Japan; Knowledge Based Silicon Corp., Columbia, SC; Oki Electric Industry Co., Ltd., LSI CAD Dept., Tokyo, Japan, SAND Microelectrics, Inc., San Jose, CA; Siemens Semiconductor, Munich, Germany; Symbios Logic, Inc., Fort Collins, CO; Systems Science, Palo Alto, CA; Taveren Technology, Inc., Austin, TX; and Viewlogic Systems, Inc., Rockville, MD have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and VSI Alliance intends to file additional written notification disclosing all changes in membership.

On November 29, 1996, VSI Alliance filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 4, 1997 (62 FR 9812).

The last notification was filed with the Department on October 28, 1998. A notice has not yet been published in the **Federal Register.**

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 99–13297 Filed 5–25–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Wireless Application Protocol Forum, Ltd. (''WAP'')

Notice is hereby given that, on January 29, 1999, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Wireless Application Protocol Forum, Ltd. (''WAP'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Acer Peripherals, Taiwan, Republic of China; Bell Atlantic Mobile, Bedminster, NJ; Bouygues Telecom, Velizy, Cedex, France; Bussan Systems, Tokyo, Japan; Connect Austria, Vienna, Austria; Denso Corp. (Shinichiro Imai), Aichiken, Japan; Dr. Materna—Systeme Software, Beratungen, Dornund, Germany; France Telecom, Issy Moulineaux, France; Glenayre Electronics, Duluth, GA; GSM Information Network, Arkel, The Netherlands; Hewlett Packard Corp., Grenoble, Cedex, France; ICO Global Communications, London, United Kingdom; LG Information & Communications Ltd., Seoul, Korea; Mercury Personal Communications; Herts, United Kingdom; Nortel (Northern Telecom), Richardson, TX; Omnitel Pronto Italia SPA, Milan, Italy; Orange Personal Communications, Bristol, United Kingdom; ORGA, Paderborn, Germany; Oracle Corporation, Redwood Shores, CA; RTS Wireless, Inc., Plainview, NY: Sony International, Aschheim-Dornach, Germany; Systems Engineering Consultants, Tokyo, Japan; Tecnomen OY, Espoo, Finland; Tegic Communications, Seattle, WA; Telefonica Moviles, Madrid, Spain; Telital, Segonico, Italy; Tokyo Digital Phone, Tokyo, Japan; Toshiba Corporation, Tokyo, Japan; Tu-Ka Cellular Tokyo Inc., Tokyo, Japan; and Unisys Corporation, Blue Bell, PA have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Wireless Application Protocol Forum, Ltd. (''WAP'') intends to file additional written notification disclosing all changes in membership.

On March 18, 1998, Wireless Application Protocol Forum, Ltd. (''WAP'') filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on December 31, 1998 (63 FR 72333).

The last notification was filed with the Department on September 17, 1998. A notice has not yet been published in the **Federal Register.**

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 99–13293 Filed 5–25–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Extension of Existing Collection; Comment Request

ACTION: Notice of Information Collection Under Review; Application to Extend/Change Nonimmigrant Status.

The Office of Management and Budget (OMB) approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on December 31, 1998 at 63 FR 72333, allowing for a 60-day public comment period. No comments were received by the Immigration and Naturalization Service during that period. The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until June 25, 1999. This process is conducted in accordance with 5 CFR Part 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Stuart Shapiro, 202–395–7316, Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to 202–395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, 1001 G Street, NW., Washington, DC 20530. Comments may also be submitted to DOJ via facsimile to 202–514–1534.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

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

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the

use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Collection:* Reinstatment without change of previously approved information collection.

(2) *Title of the Form/Collection:* Application to Extend/Change Nonimmigrant Status.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–539. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This form is used by nonimmigrants to apply for extension of stay or change of nonimmigrant status. The INS will use the data on this form to determine eligibility for the requested benefit.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 256,210 responses at 45 minutes (.75) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 192,158 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Mr. Richard A. Sloan, 202–154–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: May 20, 1999.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 99–13344 Filed 5–25–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities

ACTION: Notice of Information Collection Under Review; Arrival/Departure Record.

The Office of Management and Budget (OMB) approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on December 31, 1998 at 63 FR 72333, allowing for a 60-day public comment period. No comments were received by the Immigration and Naturalization Service. The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until June 25, 1999. This process is conducted in accordance with 5 CFR Part 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Stuart Shapiro, 202–395–7316, Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to 202–395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, 1001 G Street, NW., Washington, DC 20530. Comments may also be submitted to DOJ via facsimile to 202–514–1534.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

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

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other form of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Reinstatement without change of previously approved information collection.

(2) *Title of the Form/Collection:* Arrival/Departure Record.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Forms I–94. Office of Inspections, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. Documentation of alien arrival and departure to and from the United States is a part of the manifest requirements of Section 231 and 235 of the Immigration and Nationality Act (INA) and may be evidence of registration when issued as provided by Section 264 of the INA.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 13,924,380 responses at 4 minutes (.066 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 919,009 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Mr. Richard A. Sloan, 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: May 20, 1999.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc 99–13345 Filed 5–25–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

National Institute of Justice

[OJP (NIJ)–1231]

RIN 1121–ZB64

Announcement of the Availability of the National Institute of Justice Solicitation for Evaluation of the Domestic Violence Victims' Civil Legal Assistance Program

AGENCY: National Institute of Justice, Office of Justice Programs, Justice.

ACTION: Notice of solicitation.

SUMMARY: Announcement of the availability of the National Institute of Justice ''Evaluation of the Domestic Violence Victims' Civil Legal Assistance Program.''

DATES: Due date for receipt of proposals is close of business June 28, 1999.

ADDRESSES: National Institute of Justice, 810 Seventh Street, NW, Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: For a copy of the solicitation, please call NCJRS 1–800–851–3420. For general information about application procedures for solicitations, please call the U.S. Department of Justice Response Center 1–800–421–6770.

SUPPLEMENTARY INFORMATION:

Authority

This action is authorized under the Omnibus Crime Control and Safe Streets Act of 1968, §§ 201–03, as amended, 42 U.S.C. 3721–23 (1994).

Background

The National Institute of Justice (NIJ), in collaboration with the Office of Justice Programs' Violence Against Women Office (VAWO), is soliciting proposals for a national evaluation of the Civil Legal Assistance Program. This solicitation is aimed at research to evaluate the effectiveness of the programs funded under the Civil Legal Assistance Program. The purpose of the Domestic Violence Victims' Civil Legal Assistance Discretionary Grant Program is to strengthen direct civil legal assistance available to domestic violence victims.

The purpose of a national evaluation is to provide feedback by (1) documenting the range of activities and programs supported by the FY98 and FY99 grants; (2) documenting programs funded by other sources of assistance, the gaps these programs fill, who they serve, and how VAWO funded programs fit into the larger funding picture in a jurisdiction; (3) assessing the accomplishments of grantees; (4) examining grantee planning and implementation efforts; (5) evaluating the adequacy of and need for special conditions imposed on grantees in order to preserve victim safety and confidentiality, while simultaneously enhancing the professional services offered by grantees; and (6) developing a strategy for documenting long-term effects.

One research project will be funded for up to $200,000 for up to 24 months. Additional funds may be made available for this evaluation in subsequent years.

Interested organizations should call the National Criminal Justice Reference Service (NCJRS) at 1–800–851–3420, to obtain a copy of ''Evaluation of the Domestic Violence Victims' Civil Legal Assistance Program'' (refer to document no. SL000355). For World Wide Web access, connect to either NIJ at http://www.ojp.usdoj.gov/nij/funding.htm, or the NCJRS Justice Information Center at http://www.ncjrs.org/fedgrant.htm#nij.

Edwin Zedlewski,

Acting Director, National Institute of Justice.

[FR Doc. 99–13312 Filed 5–25–99; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

National Institute of Justice

[OJP (NIJ)–1230]

RIN 1121–ZB63

Announcement of the Availability of the National Institute of Justice Solicitation for Examination of Privatization in the Federal Bureau of Prisons

AGENCY: National Institute of Justice, Office of Justice Programs, Justice.

ACTION: Notice of solicitation.

SUMMARY: Announcement of the availability of the National Institute of Justice ''Examination of Privatization in the Federal Bureau of Prisons.''

DATES: Due date for receipt of proposals is close of business 5:00 p.m. EST on July 13, 1999.

ADDRESSES: National Institute of Justice, 810 Seventh Street, NW, Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: For a copy of the solicitation, please call NCJRS 1–800–851–3420. For general information about application procedures for solicitations, please call the U.S. Department of Justice Response Center 1–800–421–6770.

SUPPLEMENTARY INFORMATION:

Authority

This action is authorized under the Omnibus Crime Control and Safe Streets Act of 1968, §§ 201–03, as amended, 42 U.S.C. 3721–23 (1994).

Background

The National Institute of Justice (NIJ) requests proposals to conduct research and evaluation concerning the private operation of the Taft Correctional Institution. In particular, this study must address two primary topics of interest, cost and performance. It is therefore expected that the successful applicant will be strong in both cost comparison and program evaluation, which may suggest collaboration between researchers with complementary expertise in these areas. Of special interest is the development and testing of models explicating specifically how and why—and not just whether—privatization conveys advantages.

NIJ will convene an expert panel that will provide the research team selected with assessments of their proposed methodologies and analysis plans as well as their interim and final products. In addition, this research will be conducted in consultation with BOP and the private prison contractor. Specific details of this consultation will be determined at a later date.

NIJ will award one cooperative agreement for up to $675,000 with a period of performance of up to 40 months.

Interested organizations should call the National Criminal Justice Reference Service (NCJRS) at 1–800–851–3420 to obtain a copy of ''Examination of Privatization in the Federal Bureau of Prisons'' (refer to document no. SL000354). For World Wide Web access, connect to either NIJ at http://www.ojp.usdoj.gov/nij/funding.htm, or the NCJRS Justice Information Center at http://www.ncjrs.org/fedgrant.htm#nij.

Edwin Zedlewski,

Acting Director, National Institute of Justice.

[FR Doc. 99–13311 Filed 5–25–99; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,586]

Buckeye Incorporated Midland, Texas; Revised Determination on Reopening

On May 7, 1999, the Department, on its own motion, reopened its investigation for workers and former

workers at the subject firm in Midland, Texas.

The initial petition filed with the Department on behalf of workers of Buckeye, Incorporated was denied on February 9, 1999, based on the finding that the workers in Midland, Texas provided transportation services and did not produce an article in accordance with the worker group eligibility requirements of criterion (3) of Section 222 of the Trade Act of 1974, as amended. The notice was published in the **Federal Register** on April 6, 1999 (64 FR 16752).

One of the petitioners requested administration reconsideration of the Department's negative determination applicable to workers of Buckeye, Incorporated. The petitioner did not present any new substantial information which would bear importantly on the Department's determination, and the application was dismissed on March 16, 1999. The dismissal notice was published in the **Federal Register** on March 30, 1999 (64 FR 15174).

The Department just recently received a copy of the petitioner's April 14, 1999 request for judicial review filed with the U.S. Court of International Trade (USCIT), Buckeye v. Herman, Court No. 99–04–00222, regarding the Department's denial of eligibility for workers of Buckeye, Incorporated, Midland, Texas to apply for TAA.

New information submitted to the USCIT by the Buckeye petitioner, which was not shared with the Department at the time of the petitioners request for administrative reconsideration, provides a description of the work performed by the drilling fluid technicians of the subject firm. Based on this new information the Department reopened the investigation.

New findings on reopening show that while the initial petition investigation found that workers of Buckeye, Incorporated, Midland, Texas, were preliminary truck drivers providing transport services, other workers were swampers (delivery assistants), as well as drilling fluid technicians that provided services for unaffiliated crude oil producers at the well sites. This new information shows that drilling fluid technicians are engaged in employment related to the production of crude oil for unaffiliated firms. Since the truck drivers and swampers are providing support services for the drilling fluid technicians of Buckeye, Incorporated, they can do also be considered providing support services related to the production workers of the subject firm.

Sales and employment at the subject firm declined from 1997 to 1998.

The investigation disclosed that customers of Buckeye, Incorporated, Midland, Texas, were major crude oil producers who market their oil through the normal distribution channels. Workers of firms engaged in employment related to the production of crude oil have been impacted by the high penetration of imports in this market. U.S. imports of crude oil increased absolutely and relative domestic shipments from 1996 to 1997 and in January-October 1998 compared with the same 1997 time period. The ratio of imports to domestic shipments for crude oil is over 100% from 1997 through October 1998.

Conclusion

After careful consideration of the new facts obtained on reopening, it is concluded that increased imports of articles like or directly competitive with crude oil contributed importantly to the decline in sales and to the total or partial separation of workers at the subject firm. In accordance with the provisions of the Trade Act of 1974, I make the following revised determinations on reopening:

All workers of Buckeye, Incorporated, Midland, Texas, who became totally or partially separated from employment on or after January 8, 1998, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 18th day of May 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–13416 Filed 5–25–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,759]

Capco, Inc.; Coquille, OR; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on March 8, 1999, in response to a petition filed on behalf of workers at Capco, Inc., Coquille, Oregon.

The company official submitting the petition has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C., this 5th day of May, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–13410 Filed 5–25–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Acting Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than June 7, 1999.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than June 7, 1999.

The petitions filed in this case are available for inspection at the Office of the Acting Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 3rd day of May, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

APPENDIX

[Petitions Instituted on 05/03/1999]

TA–W	Subject firm (Petitioners)	Location	Date of petition	Product(s)
36,128	F and R Fashions (UNITE)	Jersey City, NJ	04/21/1999	Ladies' Wool Coats.
36,129	D and E Wood Products (Comp)	Prineville, OR	04/20/1999	Lumber—Wholesale.
36,130	Lee Textile, Inc (Comp)	Ewing, VA	04/19/1999	T-Shirts.
36,131	Thorngate, Ltd (UNITE)	Farmington, MO	04/20/1999	Men's Dress Slacks.
36,132	J.H. Boone's, Inc (Comp)	Gainesville, FL	04/16/1999	Limited Edition Sculpture.
36,133	MCM Enterprises, Inc (Wrks)	Crawfordsville, IN	04/20/1999	Specialty Wire.
36,134	Huntsman Corp (Wrks)	Woodbury, NJ	04/16/1999	Polypropylene Nibs/Pellets.
36,135	Modular Sweater, Inc (Wrks)	Brooklyn, NY	04/20/1999	Sweaters.
36,136	Lamesa Apparel (Wrks)	Lamesa, TX	04/19/1999	Ladies' Pants, Skirts, Shorts.
36,137	Latex Fashion, Inc (UNITE)	Jersey City, NJ	04/21/1999	Ladies' Wool Coats.
36,138	ABB Vetco Gray, Inc (Wrks)	Houston, TX	04/20/1999	Oilfield Equipment.
36,139	Russell Corp (Comp)	Lafayette, AL	03/31/1999	Fleece Goods.
36,140	Wellco Entrprises, Inc (Comp)	Waynesville, NC	04/20/1999	Combat Boots.
36,141	Kentucky Apprel, LLP (Comp)	Glasgow, KY	04/12/1999	Distribution Center—Jeans.
36,142	Voyager Apparel, Inc (Comp)	Tallmadge, OH	04/14/1999	Textile & Screen Print Sports Apparel.
36,143	Glasgow & Sons (UNITE)	Perth Amboy, NJ	04/15/1999	Children's Apparel.
36,144	Liz Claiborne, Inc (UNITE)	North Bergen, NJ	04/06/1999	Ladies' Apparel.
36,145	K and B Mfg., Inc (Comp)	Lake Havasu Cty, AZ	04/22/1999	Engines for Remote Control Airplanes.
36,146	Augusta Sportswear, Inc (Comp)	Metter, GA	04/16/1999	Apparel Tops—Shirts.
36,147	ITT Industries, FHS (Wrks)	New Lexington, OH	04/19/1999	Automotive Brake and Fuel Lines.
36,148	Oxford of Columbia (Wrks)	Columbia, SC	04/15/1999	Shoulder Pads.
36,149	Franco Manufacturing Co (Comp)	Monroe, NC	04/16/1999	Fabric Printing.
36,150	Louis Gallet, Inc (Wrks)	Uniontown, PA	04/16/1999	Full Fashioned Sweaters.
36,151	Adflex Solutions, Inc (Wrks)	Chandler, AZ	04/20/1999	Drills and Lasers.
36,152	Roffe Accessories (Wrks)	Long Island Cty, NY	03/30/1999	Neckties.
36,153	Croman Corp (Comp)	Boise, ID	04/16/1999	Dimension & Industrial Grade Lumber.
36,154	Stanley Works (IAMAW)	New Britain, CT	02/28/1999	Hardware.
36,155	Athens Furniture Ind. (Comp)	Statesville, NC	04/01/1999	Wood Bedroom Furniture.
36,156	Leica Microsystems, Inc (Comp)	Depew, NY	03/18/1999	Mocroscope & Related Instruments.
36,157	Paramount Studios/Disney (Wrks)	Hollywood, CA	04/13/1999	Feature Films & TV Movies of The Week.
36,158	Command Security (Wrks)	Hopkinsville, KY	04/15/1999	Provide Security Detail.
36,159	International Wire (IBT)	Rolling Prairie, IN	04/20/1999	Appliance & Automotive Wire.
36,160	Polaroid Corp (Wrks)	Waltham, MA	01/19/1999	Instant Film Products.
36,161	Lab Volt Systems, Inc (Comp)	Wallington, NJ	04/09/1999	Education Training Systems.
36,162	Otto Shirtmaker (Comp)	Livingston, TN	04/14/1999	Dress and Sport Shirts.
36,163	L.A. Roustabout, Inc (Wrks)	Kermit, TX	04/14/1999	Oil Drilling, Exploration.
36,164	Wiser Oil Co (The) (Comp)	Dallas, TX	04/19/1999	Crude Oil.
36,165	Joe T. Smith, Inc (Comp)	Hawley, TX	04/05/1999	Oil Drilling.
36,166	Weatherford International (Comp)	Kilgore, TX	04/09/1999	Rental & Downhole Services.
36,167	Retta Equipment (Wrks)	Odessa, TX	04/14/1999	Service Work on Trucks.
36,168	Dynegy Midstream Service (Comp)	Chico, TX	03/29/1999	Natural Gas.
36,169	Bernard/Hickox, Inc (Comp)	Coden, AL	04/04/1999	Crude Oil and Natural Gas.
36,170	Blue Flame, Inc (Comp)	Hobbs, NM	04/06/1999	Oilwell Repairs.

[FR Doc. 99–13413 Filed 5–25–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,079]

H.M.C. Fashions Coat, Inc., Brooklyn, New York; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on April 19, 1999, in response to a petition filed by UNITE, Local 89–22–L, on behalf of workers at H.M.C. Fashions Coat, Inc., Brooklyn, New York.

The petitioning group of workers is subject to an ongoing investigation for which a determination has not yet been issued (TAW–36,018). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C. this 17th day of May, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–13414 Filed 5–25–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,626]

Valve Sales Company, Incorporated, Houston, Texas; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on February 8, 1999 in response to a worker petition which was filed on behalf of all workers at Valve Sales Company, Incorporated, located in Houston, Texas (TA–W–35,626).

The petitioner has requested that the petition be withdrawn.

Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, D.C. this 13th day of May 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–13415 Filed 5–25–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–03040]

Homestake Mining Company, Sparks, NV; Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 USC 2273), an investigation was initiated on December 16, 1998 in response to a petition filed on behalf of workers at Homestake Mining Company, located in Sparks, Nevada (NAFTA–03040).

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated,

Signed at Washington, DC, this 17th day of May, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–13412 Filed 5–25–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–02127]

Washington Veneer (Formerly Known as Omak Wood Products) Omak, WA; Amended Notice of Revised Determination on Reconsideration

In accordance with Section 250(a), Subchapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), the Department of Labor issued a Notice of Revised Determination on Reconsideration on May 15, 1998, applicable to workers of Omak Wood Products, Omak, Washington. The notice was published in the **Federal Register** on June 5, 1998 (63 FR 30778).

At the request of a State agency, the Department reviewed the revised reconsideration for workers of the subject firm. The workers are engaged in the production of soft wood dimension lumber, plywood panel products, pine dimension stock and wood chips. The company reports that in July, 1998 Omak Wood Products, Omak, Washington was purchased by Washington Veneer.

Accordingly, the Department is amending the revised determination to correctly identify the new title name to read ''Washington Veneer'', (formerly known as Omak Wood Products), Omak, Washington.

The amended notice applicable to NAFTA–02127 is hereby issued as follows:

All workers of Washington Veneer, (formerly known as Omak Wood Products), Omak, Washington (NAFTA–02127) engaged in employment related to the production of plywood who become totally or partially separated from employment on or after December 18, 1996 through May 15, 2000 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974;

and

All workers of Washington Veneer, (formerly known as Omak Wood Products), Omak, Washington engaged in employment related to the production of lumber, veneer and wood ships, are denied eligibility to apply for NAFTA–TAA Section 250 of the Trade Act of 1974.

Signed at Washington, D.C. this 17th day of May, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–13411 Filed 5–25–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–03112]

Weatherford International, Inc., Trico-Artificial Lift Systems, San Marcos, TX; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on April 16, 1999 in response to a petition filed on behalf of workers at Weatherford International, Incorporated, San Marcos, Texas.

In a letter dated April 26, 1999, the petitioner requested that the petition for NAFTA–TAA be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, D.C., this 11th day of May 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–13409 Filed 5–25–99; 8:45 am]

BILLING CODE 4510–30–M

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 97–1 CARP SD 92–95]

Distribution of 1992, 1993, 1994 and 1995 Satellite Royalty Funds

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of termination of proceeding.

SUMMARY: The Copyright Office of the Library of Congress is announcing the termination of the proceeding to distribute the 1992–95 satellite carrier compulsory license royalties.

DATES: Effective May 21, 1999.

FOR FURTHER INFORMATION CONTACT: William J. Roberts, Senior Attorney, or Tanya Sandros, Attorney Advisor, Copyright Arbitration Royalty Panel, P.O. Box 70977, Southwest Station, Washington, D.C. 20024. Telephone: (202) 707–8380. Telefax: (202) 252–3423.

SUPPLEMENTARY INFORMATION: The Copyright Office of the Library of Congress has received notification from the copyright arbitration royalty panel conducting the Phase I distribution of satellite compulsory license fees in Docket No. 97–1 CARP SD 92–95 that all parties to the proceeding have reached settlement. Because no controversies to the distribution of these royalty funds remain, the Copyright Office is terminating this proceeding. Distribution of royalties to settled parties is being made under separate order.

Dated: May 21, 1999.

David O. Carson,

General Counsel.

[FR Doc. 99–13408 Filed 5–25–99; 8:45 am]

BILLING CODE 1410–33–P

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

Office of Federal Procurement Policy; Determination of Executive Compensation Benchmark Amount Pursuant to Section 808 of Pub. L. 105–85.

AGENCY: Office of Federal Procurement Policy, OMB.

ACTION: Notice.

SUMMARY: The Administrator of the Office of Federal Procurement Policy (OFPP) is hereby publishing the attached memorandum to heads of agencies concerning the determination of the maximum ''benchmark'' compensation that will be allowable under government contracts during contractors' FY 1999—$342,986. This determination is required to be made pursuant to Section 808 of Pub. L. 105–85. It applies equally to both defense and civilian procurement agencies.

FOR FURTHER INFORMATION CONTACT: Richard C. Loeb, Executive Secretary, Cost Accounting Standards Board, OFPP, on (202) 395–3254.

Deidre A. Lee,

Administrator.

April 28, 1999.

To the Heads of Executive Departments and Agencies

Subject: Determination of Executive Compensation Benchmark Amount Pursuant to Section 808 of Pub. L. 105–85

This memorandum sets forth the ''benchmark compensation amount'' as required by Section 39 of the Office of Federal Procurement Policy (OFPP) Act (41 U.S.C. 435), as amended. Under Section 39, the ''benchmark compensation amount'' is ''the median amount of the compensation provided for all senior executives of all benchmark corporations for the most recent year for which data is available.'' The ''benchmark compensation amount'' established as directed by Section 39 limits the allowability of compensation costs under government contracts. The ''benchmark compensation amount'' does not limit the compensation that an executive may otherwise receive.

Based on a review of commercially available surveys of executive compensation and after consultation with the Director of the Defense Contract Audit Agency, I have determined pursuant to the requirements of Section 39 that the benchmark compensation amount for contractor fiscal year 1999 is $342,986. This benchmark compensation amount is to be used for contractor fiscal year 1999, and subsequent contractor fiscal years, unless and until revised by OFPP. This benchmark compensation amount applies to contract costs incurred after January 1, 1999, under covered contracts of both the defense and civilian procurement agencies as specified in Section 808 of Pub. L. 105–85.

Questions concerning this memorandum may be addressed to Richard C. Loeb, Executive Secretary, Cost Accounting Standards Board, OFPP, on (202) 395–3254.

Deidre A. Lee,

Administrator.

[FR Doc. 99–13323 Filed 5–25–99; 8:45 am]

BILLING CODE 3110–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Combined Arts Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Combined Arts Panel, Folk & Traditional Arts section (Creation & Presentation and Planning & Stabilization categories) to the National Council on the Arts will be held on June 22, 1999. The panel will meet from 8:30 a.m. to 6:00 p.m. in Room 708 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC, 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of May 12, 1999, these sessions will be closed to the public pursuant to subsection(c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtain from Ms. Kathy Plowitz-Worden, Panel Coordinator, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5691.

Dated: May 19, 1999.

Kathy Plowitz-Worden,

Panel Coordinator, National Endowment for the Arts.

[FR Doc. 99–13304 Filed 5–25–99; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL INSTITUTE FOR LITERACY

Meeting

AGENCY: National Institute for Literacy.

ACTION: Notice of meeting.

SUMMARY: This Notice sets forth the schedules and proposed agenda of a forthcoming meeting of the National Institute for Literacy Advisory Board (Advisory Board). This notice also describes the function of the Advisory Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend the meeting.

DATE AND TIME: June 8, 1999 from 9:30 a.m. to 4:40 p.m. and June 9, 1999, from 9:30 a.m. to 3:30 p.m.

ADDRESSES: National Institute for Literacy, 800 Connecticut Avenue, NW., Suite 200, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Shelly Coles, Executive Assistant, National Institute for Literacy, 800 Connecticut Avenue, NW., Suite 200, Washington, DC 20006. Telephone (202) 632–1507.

SUPPLEMENTARY INFORMATION: The Advisory Board is authorized under Section 242 of the, Adult Education and Literacy, Title II P.L. 105–220, Workforce Investment Act of 1998. The Advisory Board consists of ten individuals appointed by the President with the advice and consent of the Senate. The Advisory board is established to advise and make recommendations to the Interagency Group, composed of the Secretaries of Education, Labor, and Health and Human Services, which administers the National Institute for Literacy (NIFL). The Interagency Group considers the Advisory Board's recommendations in planning the goals of the NIFL and in the implementation of any programs to achieve the goals of the NIFL. specifically, the Advisory Board performs the following functions (a) makes recommendations concerning the appointment of the Director and the staff of the NIFL; (b) provides independent advice on operation of the NIFL; and (c) receives reports from the Interagency Group and NIFL's Director. In addition, the NIFL consults with the Advisory Board on the award of fellowships. The Advisory Board meeting will be held in Washington, DC on June 8, 1999 from 9:30 a.m. to 4:30 p.m. and June 9, 1999 from 9:30 a.m. to 3:30 p.m. The meeting of the NIFL Advisory board is open to the public. This meeting of the Advisory Board will focus on the following agenda items: administrative Advisory Board business; NIFL proposed 3-year plan; and NIFL's policies/legislation and major projects. Records are kept of all Advisory Board proceeding and are available for public inspection at the National Institute for Literacy, 800 Connecticut Avenue, NW, Suite 200, Washington, DC 20006 from 8:30 a.m. to 5:00 p.m.

Dated: May 21, 1999.

Andrew J. Hartman,

Director, National Institute for Literacy.

[FR Doc. 99–13407 Filed 5–25–99; 8:45 am]

BILLING CODE 6055–01–M

NATIONAL SCIENCE FOUNDATION

Conservation Act of 1978; Notice of Waste Permit Application Received

AGENCY: National Science Foundation.

ACTION: Notice of permit application received under the Antarctic Conservation Act and request for comments.

SUMMARY: Notice is hereby given that the National Science Foundation (NSF) has received a waste management permit application for the United States Antarctic Program (USAP), submitted to NSF pursuant to regulations issued under the Antarctic Conservation Act of 1978.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application on or before June 25, 1999. The permit application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia, 22230.

FOR FURTHER INFORMATION CONTACT: Joyce A. Jatko or Arthur J. Brown at the above address or at (703) 306–1032.

SUPPLEMENTARY INFORMATION: Antarctic Waste Regulations in 45 CFR Part 671 require U.S. citizens, corporations, or other entities to obtain a permit for the use or release of designated pollutants in Antarctica and for the release of any waste in Antarctic. NSF has received a permit application under this regulation for USAP activities in Antarctica. The permit applicant is: Antarctic Support Associates, 61 Inverness Drive East, Suite 300, Englewood, CO 80112.

The permit application applies to USAP activities conducted by all supporting organizations at all USAP facilities and operations in Antarctica. The proposed duration of the permit is from October 1, 1999 through September 30, 2004.

Antarctic Support Associates (ASA) and other supporting organizations provide broadbased logistical support, technical support, and transportation services to the USAP. This includes the transport of both hazardous and non-hazardous waste from Antarctica to the United States.

ASA operations include procuring, transporting to Antarctica, and tracking materials containing designated pollutants that are required for USAP operations, and for NSF and NSF grantees. ASA is also responsible for fuel operations including fuel storage, distribution, and resupply; and record-keeping of fuel use. ASA collects, stores, and ships both hazardous and non-hazardous waste materials and is responsible for the final disposition of these materials once they are returned to the United States. ASA also provides training and technical guidance to enhance the safety and effectiveness of U.S. waste management practices in Antarctica.

Nadene G. Kennedy,

Permit Officer.

[FR Doc. 99–13338 Filed 5–25–99; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to the Office of Management and Budget (OMB) and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for the review and approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* Voluntary Reporting of Performance Indicators

2. *Current OMB approval number:* New Collection

3. *How often the collection is required:* One-time collection and quarterly thereafter

4. *Who is required or asked to report:* Power reactor licensees

5. *The number of annual respondents:* 66 reactor sites

6. *The number of hours needed annually to complete the requirement or request:* 13,860 hours (210 hours per site), and a one-time start-up effort of 13,200 hours

7. *Abstract:* As part of a joint industry-NRC initiative, the NRC plans to receive information submitted voluntarily by power reactor licensees regarding selected performance attributes known as performance indicators (PIs). PIs provide objective measures of the performance of licensees' systems or programs. The NRC is revising its reactor oversight process to use PI information, along with the results of selected audits and inspections, as the basis for NRC conclusions regarding plant performance and necessary regulatory response. PIs will be transmitted electronically to reduce burden on licensees and the NRC as part of the NRC's revised oversight process which is scheduled for implementation beginning in January 2000.

Submit, by July 26, 1999, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC World Wide Web site (http://www.nrc.gov/NRC/PUBLIC/OMB/index.html). The document will be available on the NRC Home Page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 E6, Washington, DC 20555–0001, by telephone at 301–415–7233, or by Internet electronic mail at BJS1@NRC.GOV.

Dated at Rockville, Maryland, this 20th day of May 1999.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–13423 Filed 5–25–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–353]

PECO Energy Company; Limerick Generating Station, Unit 2; Notice of Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 99 to Facility Operating License No. NPF–85, issued to PECO Energy Company (the licensee), which approves installation of replacement suction strainers for operation of the Limerick Generating Station (LGS), Unit 2, located in Montgomery and Chester Counties, Pennsylvania. The amendment is effective as of the date of issuance and shall be implemented prior to restart following completion of the LGS, Unit 2, refueling outage which commenced April 1999.

The amendment documents the NRC staff's approval of the implementation of a plant modification to support the installation of replacement suction strainers for the emergency core cooling systems at the LGS, Unit 2.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for a Hearing in connection with this action was published in the **Federal Register** on January 29, 1998 (63 FR 4496). The August 28, 1998, letter provided clarifying information and did not change the original proposed no significant hazards consideration. No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of the amendment will not have a significant effect on the quality of the human environment (64 FR 27014).

For further details with respect to the action, see (1) the application for amendment dated October 6, 1997, as supplemented by letter dated August 28, 1998, (2) Amendment No. 99 to License No. NPF–85, (3) the Commission's related Safety Evaluation, and (4) the Commission's Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, and at the local public document room located at the Pottstown Public Library, 500 High Street, Pottstown, PA.

Dated at Rockville, Maryland, this 19th of May 1999.

For the Nuclear Regulatory Commission.

Bartholomew C. Buckley, Sr.,

Project Manager, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–13422 Filed 5–25–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No.: 040–8778]

Receipt of an Amendment Request Regarding the Schedule for Submission of a Revised Site Decommissioning Plan and Environmental Report for the Molycorp, Washington, Pennsylvania Site (License No. SMB–1393) and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to Source Materials License No. SMB–1393, to Molycorp, Incorporated (the licensee), to approve the schedule for submission of a revised Site Decommissioning Plan (SDP) and Environmental Report (ER) for the Molycorp Washington, Pennsylvania (PA) site (License No. SMB–1393).

Background

The licensee submitted an SDP for its Washington, PA site on August 14, 1995. The agency's decommissioning criteria in effect at the time of the SDP submittal were contained in NRC's ''Action Plan to Ensure Timely Cleanup of Site Decommissioning Management Plan Sites,'' (SDMP Action Plan) (57 FR 13389; April 16, 1992). Because the cleanup levels proposed in the SDP exceeded the SDMP Action Plan criteria, the NRC requested, on September 25, 1995, that Molycorp submit additional information in the form of an ER to supplement the SDP.

NRC published its license termination rule (LTR) in 10 CFR Part 20 Subpart E, ''Radiological Criteria for License Termination,'' in July of 1997. Although this new rule supersedes the old SDMP Action Plan criteria, the LTR allows a ''grandfathering'' period for use of these criteria (10 CFR 20.1401(b)(3)). To be eligible for grandfathering, the SDP must have been submitted prior to August 20, 1998, and apply the criteria identified in the SDMP Action Plan. Because the proposed criteria in the licensee's SDP were not consistent with the SDMP Action Plan criteria, the conditions of 10 CFR 20.1401(b)(3), that would permit remediation of certain areas of the licensee's site on a ''grandfathered'' basis, were not met. In a letter dated February 16, 1999, NRC staff informed the licensee of this finding and notified the licensee that the SDP and ER must be revised to reflect the requirements of the LTR. The licensee was requested to submit a schedule for submission of a revised SDP and ER in the form of a license amendment request.

Discussion

In letters dated April 13 and 20, 1999, the licensee submitted an SDP development schedule and a request to amend its license to include a submittal date of April 16, 2000, for the revised SDP and ER. Prior to the issuance of the proposed amendment, NRC will have made findings required by the Atomic Energy Act of 1954, as amended, and NRC's regulations.

The NRC provides notice that this is a proceeding on an application for a license amendment falling within the scope of Subpart L, ''Informal Hearing Procedures for Adjudication in Materials Licensing Proceedings,'' of NRC's rules and practice for domestic licensing proceedings in 10 CFR Part 2. Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with § 2.1205(c). A request for a hearing must be filed within thirty (30) days of the date of publication of this **Federal Register** notice.

In addition to meeting other applicable requirements of 10 CFR part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

1. The interest of the requester in the proceeding;

2. How that interest may be affected by the results of the proceeding, including the reasons why the requester should be permitted a hearing, with particular reference to the factors set out in § 2.1205(h);

3. The requester's areas of concern about the licensing activity that is the subject matter of the proceeding; and

4. The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(d).

In accordance with 10 CFR 2.1205(f), each request for a hearing must also be served, by delivering it personally or by mail, to:

1. The applicant, Molycorp Incorporated, 300 Caldwell Avenue, Washington, Pennsylvania 15301, Attention Mr. John Daniels, and;

2. The NRC staff, by delivery to the Secretary, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738, between 7:45 am and 4:15 pm Federal workdays, or by mail, addressed to Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff.

For further details with respect to this action, the application for amendment request is available for inspection at the NRC's Public Document Room, 2120 L Street NW., Washington, DC 20555.

Dated at Rockville, Maryland, this 19th day of May 1999.

For the Nuclear Regulatory Commission.

John W.N. Hickey,

Chief, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 99–13419 Filed 5–25–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–275 and 50–323]

Pacific Gas and Electric Company; Diablo Canyon Power Plant, Units 1 and 2 Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of amendments to Facility Operating Licenses No. DPR–80 and No. DPR–82 that were issued to Pacific Gas and Electric Company (the licensee) for operation of the Diablo Canyon Power Plant, Units 1 and 2 (DCPP), located in San Luis Obispo County, California.

Environmental Assessment

Identification of the Proposed Action

The proposed amendments will revise the existing, or current, Technical Specifications (CTS) for DCPP in their entirety based on the guidance provided in NUREG–1431, ''Standard Technical Specifications, Westinghouse Plants,'' Revision 1, dated April 1995, and in the Commission's ''Final Policy Statement on Technical Specifications Improvements for Nuclear Power Reactors,'' published on July 22, 1993 (58 FR 39132). The proposed amendments are in accordance with the licensee's amendment request dated June 2, 1997, as supplemented by letters in 1998 dated January 9, June 25, August 5, August 28, September 25, October 16, October 23, November 25, December 4, December 17, and December 30, and in 1999 dated February 24, March 10, April 28, May 11, and May 19.

The Need for the Proposed Action

It has been recognized that nuclear safety in all nuclear power plants would benefit from an improvement and standardization of plant Technical Specifications (TS). The ''NRC Interim Policy Statement on Technical Specification Improvements for Nuclear Power Plants,'' (52 FR 3788) contained proposed criteria for defining the scope of TS. Later, the Commission's ''Final Policy Statement on Technical Specifications Improvements for Nuclear Power Reactors,'' published on July 22, 1993 (58 FR 39132), incorporated lessons learned since publication of the interim policy statement and formed the basis for revisions to 10 CFR 50.36, ''Technical Specifications.'' The ''Final Rule'' (60 FR 36953) codified criteria for determining the content of TS. To facilitate the development of standard TS for nuclear power reactors, each power reactor vendor owners' group (OG) and the NRC staff developed standard TS. For DCPP, the Improved Standard Technical Specifications (ISTS) are in NUREG–1431. This document formed part of the basis for the DCPP Improved Technical Specifications (ITS) conversion. The NRC Committee to Review Generic Requirements (CRGR) reviewed the ISTS, made note of its safety merits, and indicated its support of the conversion by operating plants to the ISTS.

Description of the Proposed Change

The proposed changes to the CTS are based on NUREG–1431 and on guidance provided by the Commission in its Final Policy Statement. The objective of the changes is to completely rewrite, reformat, and streamline the CTS (i.e., to convert the CTS to the ITS). Emphasis is placed on human factors principles to improve clarity and understanding of the TS. The Bases section of the ITS has been significantly expanded to clarify and better explain the purpose and foundation of each specification. In addition to NUREG–1431, portions of the CTS were also used as the basis for the development of the DCPP ITS. Plant-specific issues (e.g., unique design features, requirements, and operating practices) were discussed with the licensee, and generic matters were discussed with Westinghouse and other OGs.

This conversion is a joint effort in concert with three other utilities: TU Electric for Comanche Peak Steam Electric Station, Units 1 and 2 (Docket Nos. 50–445 and 50–446); Union Electric Company for Callaway Plant (Docket No. 50–483); and Wolf Creek Nuclear Operating Corporation for Wolf Creek Generating Station (Docket No. 50–482). It was a goal of the four utilities to make the ITS for all the plants as similar as possible. This joint effort includes a common methodology for the licensees in marking-up the CTS and NUREG–1431 Specifications, and the NUREG–1431 Bases, that has been accepted by the staff.

This common methodology is discussed at the end of Enclosure 2, ''Mark-Up of Current TS''; Enclosure 5a, ''Mark-Up of NUREG–1431 Specifications''; and Enclosure 5b, ''Mark-Up of NUREG–1431 Bases,'' for each of the 14 separate ITS sections that were submitted with the licensee's application. For each of the ITS sections, there is also the following enclosures:

- Enclosure 1, ''Cross-Reference Tables,'' the cross-reference table connecting each CTS specification (i.e., LCO, required action, or SR) to the associated ITS specification, sorted by both CTS and ITS specifications.
- Enclosures 3A and 3B, ''Description of Changes to Current TS'' and ''Conversion Comparison Table,'' the description of the changes to the CTS section and the comparison table showing which plants (of the four licensees in the joint effort) that each change to the CTS applies to.
- Enclosure 4, ''No Significant Hazards Considerations,'' the no significant hazards consideration (NSHC) of 10 CFR 50.91 for the changes to the CTS with generic NSHCs for administrative, more restrictive, relocation, and moving-out-of-CTS changes, and individual NSHCs for less restrictive changes and with the organization of the NSHC evaluation discussed in the beginning of the enclosure.
- Enclosures 6A and 6B, ''Differences From NUREG–1431'' and ''Conversion Comparison Table,'' the descriptions of the differences from NUREG–1431 Specifications and the comparison table showing which plants (of the four licensees in the joint effort) that each difference to the ISTS applies to.

The common methodology includes the convention that, if the words in an CTS specification are not the same as the words in the ITS specification, but the CTS words have the same meaning or have the same requirements as the words in the ITS specification, then the licensees do not have to indicate or describe a change to the CTS. In general, only technical changes have been identified; however, some non-technical changes have also been identified when the changes cannot easily be determined. The portion of any specification which is being deleted is struck through (i.e., the deletion is annotated using the strike-out feature of the word processing computer program or crossed out by hand). Any text being added to a specification is shown by shading the text, placing a circle around the new text, or by writing the text in by hand. The text being struck through or added is shown in the marked-up CTS and ISTS pages in Enclosures 2 (CTS pages) and 5 (ISTS and ISTS Bases pages) for each ITS section attachment to the application. Another convention of the common methodology is that the technical justifications for the less restrictive changes are included in the NSHCs.

The proposed changes can be grouped into the following four categories: relocated requirements, administrative changes, less restrictive changes involving deletion of requirements, and more restrictive changes. These categories are as follows:

1. Relocated requirements (i.e., the licensee's LG or R changes) are items which are in the CTS but do not meet the criteria set forth in the Final Policy Statement. The Final Policy Statement establishes a specific set of objective criteria for determining which regulatory requirements and operating restrictions should be included in the TS. Relocation of requirements to documents with an established control program, controlled by the regulations or the TS, allows the TS to be reserved only for those conditions or limitations upon reactor operation which are necessary to obviate the possibility of an abnormal situation or event giving rise to an immediate threat to the public health and safety, thereby focusing the scope of the TS. In general, the proposed relocation of items from the CTS to the Updated Safety Analysis Report (USAR), appropriate plant-specific programs, plant procedures, or ITS Bases follows the guidance of NUREG–1431. Once these items have been relocated to other licensee-controlled documents, the licensee may revise them under the provisions of 10 CFR 50.59 or other NRC-approved control mechanisms, which provide appropriate procedural means to control changes by the licensee.

2. Administrative changes (i.e., the licensee's A changes) involve the reformatting and rewording of requirements, consistent with the style of the ISTS in NUREG–1431, to make the TS more readily understandable to plant operators and other users. These changes are purely editorial in nature, or involve the movement or reformatting of requirements without affecting the technical content. Application of a standardized format and style will also help ensure consistency is achieved among specifications in the TS. During this reformatting and rewording process, no technical changes (either actual or interpretational) to the TS will be made unless they are identified and justified.

3. Less restrictive changes and the deletion of requirements involves portions of the CTS (i.e., the licensee's LS and TR changes) which (1) provide information that is descriptive in nature regarding the equipment, systems, actions, or surveillances, (2) provide little or no safety benefit, and (3) place an unnecessary burden on the licensee. This information is proposed to be deleted from the CTS and, in some instances, moved to the proposed Bases, USAR, or procedures. The removal of descriptive information to the Bases of the TS, USAR, or procedures is permissible because these documents will be controlled through a process that utilizes 10 CFR 50.59 and other NRC-approved control mechanisms. The relaxations of requirements were the result of generic NRC actions or other analyses. They will be justified on a case-by-case basis for the DCPP and described in the safety evaluation to be issued with the license amendment.

4. More restrictive requirements (i.e., the licensee's M changes) are proposed to be implemented in some areas to impose more stringent requirements than are in the CTS. In some cases, these more restrictive requirements are being imposed to be consistent with the ISTS. Such changes have been made after ensuring the previously evaluated safety analysis for the DCPP was not affected. Also, other more restrictive technical changes have been made to achieve consistency, correct discrepancies, and remove ambiguities from the TS. Examples of more restrictive requirements include: placing a Limiting Condition for Operation (LCO) on plant equipment which is not required by the CTS to be operable; more restrictive requirements to restore inoperable equipment; and more restrictive surveillance requirements.

There are other proposed changes to the CTS that may be included in the proposed amendments to convert the CTS to the ITS. These are beyond-scope issues (BSIs) in that they are changes to both the CTS and the ISTS. For the DCPP, these are the following:

1. The proposed change to ITS 3.1.7 adds a new action for more than one digital rod position indicator (DRPI) per group inoperable.

2. The proposed change to ITS Surveillance Requirements (SR) 3.2.1.1 and 3.2.1.1 would revise the frequency to within 24 hours for verifying the axial heat flux hot channel factor is within limit after achieving equilibrium conditions.

3. The proposed change to ITS SR 3.6.3.7 adds a note to not require leak rate test of containment purge valves with resilient seals when penetration flow path is isolated by test-tested blank flange.

4. The proposed change to ITS 3.1.3 and 5.6.5 adds moderator temperature coefficient to the Core Operating Limits Report.

5. The proposed change to ITS 3.9.1 and 5.6.5 adds refueling boron concentration to the Core Operating Limits Report.

6. The proposed change adds an allowance to CTS SR 6.8.4.i for the reactor coolant pump flywheel inspection program (ITS 5.5.7) to permit an exception to the examination requirements specified in the CTS SR (i.e., regulatory position C.4.b of NRC Regulatory Guide (RG) 1.14, Revision 1) that is consistent with WCAP–14535, ''Topical Report on Reactor Coolant Pump Flywheel Inspection Elimination.

7. Quarterly channel operational tests (COTs) would be added to CTS Table 4.3–1 for the power range neutron flux-low and intermediate range neutron flux. The CTS only require a COT prior to startup for these functions. A new Note 19 would be added to require that the new quarterly COT be performed within 12 hours after reducing power below P–10 for the power range and intermediate range instrumentation (P–10 is the dividing point marking the applicability for these trip functions), if not performed within the previous 92 days. A new Note 20 would be added to state that the P–6 and P–10 interlocks are verified to be in their required state during all COTs on the power range neutron flux-low and intermediate range neutron flux trip functions.

8. The proposed change would revise requirements concerning overtime by replacing CTS 6.2.2.f with a reference to administrative procedures for the control of working hours.

9. The proposed change would revise CTS 6.2.4 to eliminate the title of Shift Technical Advisor. The engineering expertise is maintained on shift, but a separate individual would not be required as allowed by a Commission Policy Statement.

10. The proposed change would revise the dose rate limits in the Radioactive Effluent Controls Program for releases to areas beyond the site boundary to reflect 10 CFR Part 20 requirements.

11. The proposed change would revise the Radioactive Effluents Controls Program to include clarification statements denoting that the provisions of CTS 4.0.2 and 4.0.3, which allow extensions to surveillance frequencies, are applicable to these activities.

12. CTS provides alternative high radiation area access control alternatives pursuant to 10 CFR 20.203(c)(2). The proposed change would revise CTS 6.12 to meet the current requirements in 10 CFR Part 20 and the guidance in NRC Regulatory Guide 8.38, ''Control of Access to High and Very High Radiation Areas in Nuclear Power Plants'' for such access controls.

13. The proposed change would delete the CTS 6.9.1.7 requirement to provide documentation of all challenges to the power operated relief valves (PORVs) and safety valves on the reactor coolant system. The proposed change is based on Generic Letter 97–02, ''Revised Contents of the Monthly Operating Report,'' which reduced the requirement for submitting such information to the NRC. GL–97–02 did not include these valves for information to be submitted.

14. The proposed change would limit the CTS SRs 4.4.4.1.a and 4.4.4.2 requirements to perform the 92-day surveillance of the pressurizer PORV block valves and the 18-month surveillance of the pressurizer PORVs (i.e., perform one complete cycle of each valve) to only Modes 1 and 2.

15. The proposed change would limit the CTS 4.4.4.2 requirement to perform the 92-day surveillance of the pressurizer PORV block valves in that the SR would not be performed if the PORV block valve is closed to meet Action a of CTS LCO 3.4.4. Action a is for a PORV being inoperable, but capable of being cycled.

16. The proposed change would revise the frequency for performing the trip actuating device operational test (TADOT) in CTS Table 4.3–1 for the turbine trip (functional units 17.a and 17.b) to be consistent with the modes for which the surveillance is required. This would be adding a footnote to the TADOT that states ''Prior to exceeding the P–9 interlock whenever the unit has been in Mode 3.''

17. The proposed change would revise the diesel generator (DG) loading requirements for the load rejection test in CTS SR 4.8.1.1.2.b.4 to specify a range of acceptable loads in kW without tripping instead of specifying only a single minimum acceptable kW load. The CTS require that the minimum load for the load rejection test in SR 4.8.1.1.2.b.4 is 2484 kW and the proposed range of loads is ≥ 2370 kW and ≤ 2610 kW.

18. The proposed change would increase the maximum allowable DG voltage following load rejection in CTS SR 4.8.1.1.2.b.4 from 4580 to 6200 volts.

19. The proposed change would remove the wording ''during shutdown'' from the frequency of CTS SR 4.8.1.1.1.b.1 for manual bus transfers, SR 4.8.1.1.2b.4 for emergency diesel generator (EDG) full load testing, and SR 4.8.1.1.2.b.8 for the EDG 24-hour load run testing. The change will facilitate post maintenance testing of an EDG without requiring a plant shutdown.

20. The proposed change incorporates WCAP–13632–P–A, ''Eliminate Response Time Testing of Pressure Sensors,'' into CTS SR 4.3.1.2 and SR 4.3.2.2, to state that the function shall be ''verified'' rather than ''demonstrated.'' This changes the Bases for ITS SR 3.3.1.16 and SR 3.3.2.10 to allow the elimination of pressure sensor response time testing.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed conversion of the CTS to the ITS for DCPP, including the beyond-scope issues discussed above. Changes which are administrative in nature have been found to have no effect on the technical content of the TS. The increased clarity and understanding these changes bring to the TS are expected to improve the operators control of DCPP in normal and accident conditions.

Relocation of requirements from the CTS to other licensee-controlled documents does not change the requirements themselves. Future changes to these requirements may then be made by the licensee under 10 CFR 50.59 and other NRC-approved control mechanisms which will ensure continued maintenance of adequate requirements. All such relocations have been found consistent with the guidelines of NUREG–1431, the Commission's Final Policy Statement, and 10 CFR 50.36, as amended.

Changes involving more restrictive requirements have been found to enhance plant safety.

Changes involving less restrictive requirements have been reviewed individually. When requirements have been shown to provide little or no safety benefit, or to place an unnecessary burden on the licensee, their removal from the TS was justified. In most cases, relaxations previously granted to individual plants on a plant-specific basis were the result of a generic action, or of agreements reached during discussions with the OG, and found to be acceptable for the plant. Generic relaxations contained in NUREG–1431 have been reviewed by the NRC staff and found to be acceptable.

In summary, the proposed revisions to the TS were found to provide control of plant operations such that reasonable assurance will be provided that the health and safety of the public will be adequately protected.

The proposed amendments will not increase the probability or consequences of accidents, will not change the quantity or types of any effluent that may be released offsite, and will not significantly increase the occupational or public exposure. Also, these changes do not increase the licensed power and allowable effluents for the plant. The changes will not create any new or unreviewed environmental impacts that were not considered in the Final Environmental Statement (FES) related to the operation of DCPP, dated May 1973 and addendum dated May 1976. Therefore, there are no significant radiological impacts associated with the proposed amendments.

With regard to potential non-radiological impacts, the proposed amendments involve features located entirely within the restricted area for the plant defined in 10 CFR Part 20. They do not affect non-radiological plant effluents and have no other environmental impact. They do not increase any discharge limit for the plant. Therefore, there are no significant non-radiological environmental impacts associated with the proposed amendments.

Accordingly, the Commission concludes that there are no significant environmental impacts associated with the proposed amendments.

Alternatives to the Proposed Action

Since the Commission has concluded there is no significant environmental impact associated with the proposed amendments, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative to the proposed amendments

would be to deny the amendments. Denial of the licensee's application would not reduce the environmental impacts of DCPP operations, but it would prevent the safety benefits to the plant from the conversion to the ITS. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the FES for DCPP.

Agencies and Persons Consulted

In accordance with its stated policy, on April 2, 1999, the staff consulted with the California State official, Mr. Steve Hsu of the Radiologic Health Branch of the State Department of Health Services, regarding the environmental impact of the proposed amendments. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed amendments 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 application dated June 2, 1997, as supplemented by letters in 1998 dated January 9, June 25, August 5, August 28, September 25, October 16, October 23, November 25, December 4, December 17, and December 30, and in 1999 dated February 24, March 10, April 28, May 11, and May 19, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

Dated at Rockville, Maryland, this 20th day of May 1999.

For the Nuclear Regulatory Commission.

Steven D. Bloom,

Project Manager, Section 2, Project Directorate IV & Decommissioning, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

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NUCLEAR REGULATORY COMMISSION

[Docket No. 50–482]

Union Electric Company; Callaway Plant, Unit 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an amendment to Facility Operating License No. NPF–30 that was issued to Union Electric Company (the licensee) for operation of the Callaway Plant, Unit 1 located in Callaway County, Missouri.

Environmental Assessment

Identification of the Proposed Action

The proposed amendment will revise the Current Technical Specifications (CTS) for Callaway Plant, Unit 1 in their entirety based on the guidance provided in NUREG–1431, ''Standard Technical Specifications, Westinghouse Plants,'' Revision 1, dated April 1995, and in the Commission's ''Final Policy Statement on Technical Specifications Improvements for Nuclear Power Reactors,'' published on July 22, 1993 (58 FR 39132). The proposed action is in accordance with the licensee's amendment request dated May 15, 1997, as supplemented by (1) the letters in 1998 dated June 26, August 4, August 27, September 24, October 21 (two letters), November 23, November 25, December 11, and December 22, and (2) the letters in 1999 dated February 5, March 9, April 7, April 21 and April 30.

The Need for the Proposed Action

It has been recognized that nuclear safety in all nuclear power plants would benefit from an improvement and standardization of plant Technical Specifications (TS). The NRC's ''Interim Policy Statement on Technical Specification Improvements for Nuclear Power Plants'' (52 FR 3788), contained proposed criteria for defining the scope of TS. Later, the NRC's ''Final Policy Statement on Technical Specifications Improvements for Nuclear Power Reactors,'' published on July 22, 1993 (58 FR 39132), incorporated lessons learned since publication of the interim policy statement and formed the basis for revisions to 10 CFR 50.36, ''Technical Specifications.'' The ''Final Rule'' (60 FR 36953) codified criteria for determining the content of TS. To facilitate the development of standard TS for nuclear power reactors, each power reactor vendor owners' group (OG) and the NRC staff developed standard TS. For Callaway Plant, Unit 1, the Improved Standard Technical Specifications (ISTS) are in NUREG–1431. This document formed part of the basis for the Callaway Plant, Unit 1 Improved Technical Specifications (ITS) conversion. The NRC Committee to Review Generic Requirements (CRGR) reviewed the ISTS, made note of its safety merits, and indicated its support of the conversion by operating plants to the ISTS.

Description of the Proposed Change

The proposed changes to the CTS are based on NUREG–1431 and on guidance provided by the Commission in its Final Policy Statement. The objective of the changes is to completely rewrite, reformat, and streamline the CTS (i.e., to convert the CTS to the ITS). Emphasis is placed on human factors principles to improve clarity and understanding of the TS. The Bases section of the ITS has been significantly expanded to clarify and better explain the purpose and foundation of each specification. In addition to NUREG–1431, portions of the CTS were also used as the basis for the development of the Callaway Plant, Unit 1 ITS. Plant-specific issues (e.g., unique design features, requirements, and operating practices) were discussed with the licensee, and generic matters with Westinghouse and other OGs.

This conversion is a joint effort in concert with three other utilities: Pacific Gas & Electric Company for Diablo Canyon Power Plant, Units 1 and 2 (Docket Nos. 50–275 and 50–323); TU Electric for Comanche Peak Steam Electric Station, Units 1 and 2 (Docket Nos. 50–445 and 50–446); and Wolf Creek Nuclear Operating Corporation for Wolf Creek Generating Station (Docket No. 50–482). It was a goal of the four utilities to make the ITS for all the plants as similar as possible. This joint effort includes a common methodology for the licensees in marking-up the CTS and NUREG–1431 specifications, and the NUREG–1431 Bases, that has been accepted by the staff.

This common methodology is discussed at the end of Enclosure 2, ''Mark-Up of Current TS;'' Enclosure 5a, ''Mark-Up of NUREG–1431 Specifications;'' and Enclosure 5b, ''Mark-Up of NUREG–1431 Bases,'' for each of the 14 separate ITS sections that were submitted with the licensee's application. Each of the 14 ITS sections also includes the following enclosures:

- Enclosure 1, ''Cross-Reference Table,'' provides the cross-reference table connecting each CTS specification (i.e., limiting condition for operation, required action, or surveillance requirement) to the associated ITS

specification, sorted by both CTS and ITS specifications.

- Enclosures 3A and 3B, ''Description of Changes to Current TS'' and ''Conversion Comparison Table,'' provides the description of the changes to the CTS section and the comparison table showing which plants (of the four licensees in the joint effort) that each change applies.
- Enclosure 4, ''No Significant Hazards Considerations,'' provides the no significant hazards consideration (NSHC) of 10 CFR 50.91 for the changes to the CTS. A description of the NSHC organization is provided, followed by generic NSHCs for administrative, more restrictive, relocation, and moving-out-of-CTS changes, and individual NSHCs for less restrictive changes.
- Enclosures 6A and 6B, ''Differences From NUREG–1431'' and ''Conversion Comparison Table,'' provides the descriptions of the differences from NUREG–1431 specifications and the comparison table showing which plants (of the four licensees in the joint effort) that each difference applies.

The common methodology includes the convention that, if the words in a CTS specification are not the same as the words in the ITS specification, but the CTS words have the same meaning or have the same requirements as the words in the ITS specification, then the licensees do not have to indicate or describe a change to the CTS. In general, only technical changes have been identified; however, some non-technical changes have also been identified. The portion of any specification which is being deleted is struck through (i.e., the deletion is annotated using the strike-out feature of the word processing computer program or crossed out by hand). Any text being added to a specification is shown by shading the text, placing a circle around the new text, or by writing the text in by hand. The text being struck through or added is shown in the marked-up CTS and ISTS pages in Enclosures 2 (CTS pages) and 5 (ISTS and ISTS Bases pages) for each ITS section attachment to the application. Another convention of the common methodology is that the technical justifications for the less restrictive changes are in the NSHCs.

The proposed changes can be grouped into the following four categories: relocated requirements, administrative changes, less restrictive changes involving deletion of requirements, and more restrictive changes. These categories are as follows:

1. Relocated requirements (i.e., the licensee's ''LG'' or ''R'' changes) are items which are in the CTS but do not meet the criteria set forth in the Final Policy Statement. The Final Policy Statement establishes a specific set of objective criteria for determining which regulatory requirements and operating restrictions should be included in the TS. Relocation of requirements to documents with an established control program, controlled by the regulations or the TS, allows the TS to be reserved only for those conditions or limitations upon reactor operation which are necessary to obviate the possibility of an abnormal situation or event giving rise to an immediate threat to the public health and safety, thereby focusing the scope of the TS. In general, the proposed relocation of items from the CTS to the Final Safety Analysis Report (FSAR), appropriate plant-specific programs, station procedures, or ITS Bases follows the guidance of NUREG–1431. Once these items have been relocated to other licensee-controlled documents, the licensee may revise them under the provisions of 10 CFR 50.59 or other NRC-approved control mechanisms, which provide appropriate procedural means to control changes by the licensee.

2. Administrative changes (i.e., the licensee's ''A'' changes) involve the reformatting and rewording of requirements, consistent with the style of the ISTS in NUREG–1431, to make the TS more readily understandable to station operators and other users. These changes are purely editorial in nature, or involve the movement or reformatting of requirements without affecting the technical content. Application of a standardized format and style will also help ensure consistency is achieved among specifications in the TS. During this reformatting and rewording process, no technical changes (either actual or interpretational) to the TS will be made unless they are identified and justified.

3. Less restrictive changes and the deletion of requirements involves portions of the CTS (i.e., the licensee's ''LS'' and ''TR'' changes) which (1) provide information that is descriptive in nature regarding the equipment, systems, actions, or surveillances, (2) provide little or no safety benefit, and (3) place an unnecessary burden on the licensee. This information is proposed to be deleted from the CTS and, in some instances, moved to the proposed Bases, FSAR, or procedures. The removal of descriptive information to the Bases of the TS, FSAR, or procedures is permissible because these documents will be controlled through a process that utilizes 10 CFR 50.59 and other NRC-approved control mechanisms. The relaxation of requirements were the result of generic NRC actions or other analyses. They will be justified on a case-by-case basis for the Callaway Plant, Unit 1 and described in the safety evaluation to be issued with the license amendment.

4. More restrictive requirements (i.e., the licensee's ''M'' changes) are proposed to be implemented in some areas to impose more stringent requirements than are in the CTS. In some cases, these more restrictive requirements are being imposed to be consistent with the ISTS. Such changes have been made after ensuring the previously evaluated safety analysis for the Callaway Plant, Unit 1 was not affected. Also, other more restrictive technical changes have been made to achieve consistency, correct discrepancies, and remove ambiguities from the TS. Examples of more restrictive requirements include: placing a Limiting Condition for Operation (LCO) on station equipment, which is not required by the CTS to be operable; more restrictive requirements to restore inoperable equipment; and more restrictive surveillance requirements.

There are twenty-four other proposed changes to the CTS that are included in the proposed amendment to convert the CTS to the ITS. These are beyond scope issues (BSIs) in that they are changes to both the CTS and the ISTS. For the Callaway Plant, Unit 1, these are the following:

1. Change 2–06–M (CTS Section 3/4.2). The proposed change to CTS Surveillance Requirement (SR) 4.2.2.2.d would add a frequency of once within 24 hours for verifying the axial heat flux hot channel factor is within limits after achieving equilibrium conditions.

2. Change 1–54–LS–37 (CTS Section 3/4.3). The proposed change would revise Action 5.b of CTS Table 3.3–1 to increase the verification interval for unborated water source isolation valve position from 14 days to 31 days.

3. Change 1–15–M (CTS Section 3/4.4). The proposed change would revise steam generator (SG) level requirements from 10% wide range to 4% narrow range in CTS SRs 4.4.1.2.2 and 4.4.1.3.2 for Modes 3 and 4, and from 10% wide range to 66% wide range for Mode 5, to ensure SG tubes are covered and provide an adequate heat sink.

4. Change 9–17–LS–24 (CTS Section 3/4.4). The proposed change would revise the applicability note to CTS Limiting Condition for Operation (LCO) 3.4.9.3 to allow a longer time, up to one hour, for both centrifugal charging pumps to be capable of injecting into the reactor coolant system.

5. Change 11–03–M (CTS Section 3/4.9). The proposed change would

revise the reference for the spent fuel pool level from that above top of fuel stored in racks to that above the top of racks in CTS LCO 3.9.11.

6. Change 3–15–M (CTS Section 6.0). The proposed change would add the refueling boron concentration to the Core Operating Limits Report in CTS 6.9.1.9.

7. Change 3–11–A (CTS Section 6.0). The proposed changes would revise limits for high radiation areas in CTS 6.12.1 to reflect the requirements of revised 10 CFR Part 20.

8. Change 1–34–LS–2 (CTS Section 1.0). The proposed change would add notes to CTS Table 1.2 to identify the number of reactor vessel head closure bolts required to be fully tensioned for Modes 4 and 5. A Note is also proposed to address Mode 6 bolt requirements.

9. Change 1–7–LS–3 (CTS Section 3/4.3). The proposed change to CTS Table 3.3–1 would (1) extend the completion time for CTS Action 3.b from no time specified to 24 hours for channel restoration or changing the power level to either below P–6 or above P–10, (2) change the applicable modes and delete CTS Action 3.a because it is now outside the revised intermediate range neutron flux channel applicability, and (3) add a less restrictive new action that requires immediate suspension of operations involving positive reactivity additions and a power reduction below P–6 within two hours, but no longer requires a reduction to Mode 3.

10. Change 1–22–M (CTS Section 3/4.3). The proposed change would add quarterly channel operational tests (COTs) to CTS Table 4.3–1 for the power range neutron flux-low, intermediate range neutron flux, and source range neutron flux trip functions. The CTS only require a COT prior to startup for these functions. New Note 19 (which is from the STS) would be added to require that the new quarterly COT be performed within 12 hours after reducing power below P–10 for the power range and intermediate range (P–10 is the dividing point marking the applicability for these trip functions), if not performed in the previous 92 days. New Note 20 (which is from the STS), would be added to state that the P–6 and P–10 interlocks are verified to be in their required state during all COTs on the power range neutron flux-low and intermediate range neutron flux trip functions.

11. Change 1–46–M (CTS Section 3/4.3). The proposed change would revise CTS Table 3.3–1 Action 13 and CTS Table 3.3–3 Action 36 to require an inoperable SG low-low level (normal containment environment) instrument channel be placed in the tripped condition within 6 hours. The option to place the associated environmental allowance monitor (EAM) channels in trip would be deleted.

12. Change 4–09–LS–36 (CTS Section 3/4.4). The proposed change would limit the CTS SR 4.4.4.2 requirement to perform the 92-day surveillance of the pressurizer power operated relief (PORV) block valves so that it is not required to be performed if the block valve is closed to meet CTS LCO 3.4.4 Action a. A note is also proposed to be added to action d to state that the Action does not apply if the block valve is inoperable solely to satisfy CTS LCO 3.4.4 Action b or c.

13. Change 10–20–LS–39 (CTS Section 3/4.7). The proposed change would add an action to CTS LCO 3.7.6 for ventilation system pressure envelope degradation that allows 24 hours to restore the control room pressure envelope through repairs before requiring the unit to perform an orderly shutdown. The new action has a longer allowed outage time than LCO 3.0.4 which the CTS would require to be entered immediately. The change would recognize that the ventilation trains associated with the pressure envelope would still be operable.

14. Change 2–25–LS–23 (CTS Section 3/4.8). The proposed change would allow substitution of a modified performance discharge test for the battery service test in CTS SR 4.8.2.1.e.

15. Change 1–09–A (CTS Section 6.0). The proposed change would replace CTS 6.2.2.e requirements concerning overtime with a reference to administrative procedures for the control of working hours.

16. Change 1–15–A (CTS Section 6.0). The proposed change would revise CTS 6.2.2.g to eliminate the title of Shift Technical Advisor (STA). The engineering expertise would be maintained on shift, but not as a separate individual, as allowed by the Commission's Policy Statement on engineering expertise.

17. Change 2–17–LS–1 (CTS Section 6.0). The proposed change would add an allowance to the CTS for the reactor coolant pump flywheel inspection program to permit an exception to the examination requirements specified in CTS SR 6.8.5.b (Regulatory position C.b.4 of NRC Regulatory Guide 1.14, ''Reactor Coolant Pump Flywheel Integrity,'' Revision 1.) The exception would allow either an ultrasonic volumetric or surface examination as an acceptable inspection method.

18. Change 2–18–A (CTS Section 6.0). The proposed change would revise the CTS 6.8.4.e.7 dose rate limits in the radiological effluents controls program to reflect 10 CFR Part 20 requirements.

19. Change 2–22–A (CTS Section 6.0). The proposed change would revise the radiological effluents controls program in CTS 6.8.3.e to add clarifying statements denoting that the provisions of CTS 4.0.2 and 4.0.3, which allow extensions to surveillance frequencies, are also applicable to these program activities.

20. Change 3–18–LS–5 (CTS Section 6.0). The CTS 6.9.1.8 requirement to provide documentation of all challenges to the power operated relief valves (PORVs) and safety valves on the reactor coolant system would be deleted. This would be based on NRC Generic Letter (GL) 97–02, ''Revised Contents in the Monthly Operating Report,'' which reduced the requirements for submitting such information to the NRC. The GL did not include these valves for information to be submitted.

21. Change 9–14–M (CTS Section 3/4.4). The proposed change would add a new surveillance requirement to CTS LCO 3.4.9.3 on overpressure protection systems to verify each accumulator is isolated when the accumulator pressure is greater than or equal to the maximum reactor coolant system (RCS) pressure for the existing RCS cold leg temperature allowed by the pressure/temperature limit curves provided in the Pressure Temperature Limit Report.

22. Change 14–09–M (CTS Section 3/4.7). The proposed change would add a new LCO, with actions and surveillance requirements from the ITS, to the CTS for the allowable fuel storage boron concentration. The new specification would be based on ITS 3.7.17 with the proposed minimum acceptable boron concentration for the spent fuel storage pool being 2165 ppm boron.

23. Change 1–15–A (CTS Section 3/4.3). The proposed change would modify the applicability of the reactor trip on turbine trip function in CTS Table 3.3–1 by adding a new footnote (c) stating that this function would only be required to be operable above the P–9 interlock. This is proposed since this function is blocked below the P–9 interlock. The applicability change would also be reflected in the revised trip actuating device operational test (TADOT) requirements for functional unit #16 in CTS Table 4.3–2.

24. Change 1–30–M (CTS Section 3/4.3). The proposed change would add a new LCO with actions and SR from the ITS for the boron dilution mitigation system. Additional restrictions not in the CTS would be added to address the requirement that one RCS loop shall be in operation for Modes 2 (below P–6), 3,

4 and 5. This is not included in the CTS or ITS 3.3.9.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed conversion of the CTS to the ITS for Callaway Plant, Unit 1, including the beyond scope issues discussed above. Changes which are administrative in nature have been found to have no effect on the technical content of the TS. The increased clarity and understanding these changes bring to the TS are expected to improve the operators' control of Callaway Plant, Unit 1 in normal and accident conditions.

Relocation of requirements from the CTS to other licensee-controlled documents does not change the requirements themselves. Future changes to these requirements may then be made by the licensee under 10 CFR 50.59 and other NRC-approved control mechanisms which will ensure continued maintenance of adequate requirements. All such relocations have been found consistent with the guidelines of NUREG–1431 and the Commission's Final Policy Statement.

Changes involving more restrictive requirements have been found to enhance station safety.

Changes involving less restrictive requirements have been reviewed individually. When requirements have been shown to provide little or no safety benefit, or to place an unnecessary burden on the licensee, their removal from the TS was justified. In most cases, relaxations previously granted to individual plants on a plant-specific basis were the result of a generic action, or of agreements reached during discussions with the OG, and found to be acceptable for Callaway Plant, Unit 1. Generic relaxations contained in NUREG–1431 have been reviewed by the NRC staff and found to be acceptable.

In summary, the proposed revisions to the TS were found to provide control of station operations such that reasonable assurance will be provided that the health and safety of the public will be adequately protected.

The proposed action will not increase the probability or consequences of accidents, will not change the quantity or types of any effluent that may be released offsite, and will not significantly increase the occupational or public radiation exposure. Also, these changes do not increase the licensed power and allowable effluents for the station. The changes will not create any new or unreviewed environmental impacts that were not considered in the Final Environmental Statement related to the operation of Callaway Plant, Unit 1, NUREG–0813, dated January 1982. Therefore, there are no significant radiological impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action only involves features located entirely within the restricted area for the station defined in 10 CFR Part 20 and does not involve any historic sites. The proposed action does not affect non-radiological station effluents and has no other environmental impact. It does not increase any discharge limit for the station. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the Commission concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the ''no-action'' alternative). Denial of the licensee's application would result in no change in current environment impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Callaway Plant, Unit 1 dated January 1982.

Agencies and Persons Consulted

In accordance with its stated policy, on May 19, 1999, the staff consulted with the Missouri State official, regarding the environmental impact of the proposed action. The State official had no comments to offer.

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 application dated May 15, 1997, as supplemented by (1) the letters in 1998 dated June 26, August 4, August 27, September 24, October 21 (two letters), November 23, November 25, December 11, and December 22, and (2) the letters in 1999 dated February 5, March 9, April 7, April 21 and April 30 which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the University of Missouri-Columbia, Elmer Ellis Library, Columbia Missouri, 65201–5149.

Dated at Rockville, Maryland, this 20th day of May 1999.

For the Nuclear Regulatory Commission.

Mel Gray,

Project Manager, Section 2, Project Directorate IV & Decommissioning Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–13421 Filed 5–25–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

DATE: Weeks of May 24, 31, June 7, and June 14, 1999.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and closed.

MATTERS TO BE CONSIDERED:

Week of May 24

Thursday, May 27

11:30 a.m. Affirmation Session (Public Meeting) (if needed).

Week of May 31—Tentative

There are no meetings scheduled for the Week of May 31.

Week of June 7—Tentative

There are no meetings scheduled for the Week of June 7.

Week of June 14—Tentative

Monday, June 14

2:00 p.m. Briefing on 10 CFR Part 70—Proposed Rule For Revised Requirements for Domestic Licensing of Special Nuclear Material (Public Meeting) (Contract: Ted Sherr, 301–415–7218).

Tuesday, June 15

10:30 a.m. All Employees Meeting (Public Meeting) (''The Green'' Plaza Area).

1:30 p.m. All Employees Meeting (Public Meeting) (''The Green'' Plaza Area).

Wednesday, June 16

9:00 a.m. Briefing on Proposed Export of High Enriched Uranium to Canada (Public Meeting) (Contact: Ron Hauber, 301–415–2344).

Thursday, June 17

9:00 a.m. Briefing on Status of Uranium Recovery (Public Meeting) (Contact: King Stablein, 301–415–7238).

11:00 a.m. Affirmation Session (Public Meeting) (If needed).

Friday, June 18

9:30 a.m. Briefing by Office of International Programs (Public Meeting) (Contact: Karen Henderson, 301–415–1771).

* 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.

* * * * *

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.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 99–13485 Filed 5–24–99; 10:50 am]

BILLING CODE 7590–01–M

POSTAL RATE COMMISSION

Mailers' Presentation

AGENCY: Postal Rate Commission.

ACTION: Notice of presentation.

SUMMARY: Postal consultants will address the Commission on issures affecting mailers. Their presentation will discuss the impact of decisions on mailers.

DATES: May 27, 1999.

ADDRESSES: *See* **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, Postal Rate Commission, Suite 300, 1333 H Street, NW, Washington, DC 20268–0001, (202) 789–6820.

SUPPLEMENTARY INFORMATION: WIT Postal Logistics (Plainfield, IL) will present their prespective on mailing issues, especially those related to publishing. The presentation will be held on Commission premises at 1333 H Street NW, Wshington, DC 20268–0001, at 10:30 a.m. on May 27, 1999.

Dated: May 20, 1999.

Cyril J. Pittack,

Acting Secretary.

[FR Doc. 99–13340 Filed 5–25–99; 8:45 am]

BILLING CODE 7710–FW–M

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden released to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and Purpose of information collection:

Medical Reports: OMB 3220–0038.

Under sections 2(a)(1)(iv), 2(a)(2) and 2(a)(3) of the Railroad Retirement Act (RRA), annuities are payable to qualified railroad employees whose physical or mental condition is such they are unable to (1) work in their regular occupation (occupational disability); or (2) work at all (permanent total disability). The requirements for establishment of disability and proof of continuance of disability are prescribed in 20 CFR 220.

Under sections 2(c) and 2(d) of the RRA, annuities are also payable to qualified spouses, widow(ers) who have in their care a qualified child who is under a disability which began before age 22; widow(ers) age 50-59 who are under a disability; and remarried widows and surviving divorced wives who would also be entitled under section 202(e) and 202(f) of the Social Security Act. For entitlement under section 2(c), 2(d)(i), and 2(d)(iii) of the RRA, an individual is disabled if he/she is unable to engage in any regular employment. For entitlement under section 2(d)(v) of the RRA, the individual must have an impairment which is so severe that, in accordance with the regulations of the Social Security Administration, any gainful activity would be precluded. The Railroad Retirement Board (RRB) also determines entitlement to a period of disability or early Medicare entitlement for qualified claimants.

To enable the RRB to determine the eligibility of an applicant or annuitant for disability benefits under the RRA, the RRB requests supportive medical evidence from railroad employers, personal physicians, private hospitals and state agencies. The RRB currently utilizes Forms G–3EMP, G–250, G–250a, G–260, GL–12, RL–11b and RL–11d to obtain the necessary medical evidence. Completion is voluntary. One response is requested to each respondent

ESTIMATE OF RESPONDENT BURDEN

Form No.	Annual re-sponses	Time (min)	Burden (hrs.)
G–3EMP ...	600	10	100
G–250	12,000	37	7,4000
G–250a	12,000	20	4,000
G–260	100	25	42
RL–11b	5,000	10	833
RL–11d	250	10	42
Total ...	29,950	.....	12,417

The RRB proposes to delete Form GL–12 from the collection as it is no longer required. Minor non-burden impacting editorial changes are being proposed to the remaining forms in the collection.

ADDITIONAL INFORMATION OR COMMENTS: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 99–13406 Filed 5–25–99; 8:45 am]

BILLING CODE 7905–01–M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s):

(1) *Collection title: Aged Monitoring Questionnaire.*

(2) *Form(s) submitted:* G–19c.

(3) *OMB Number:* 3220–0178.

(4) *Expiration date of current OMB clearance:* 7/31/1999.

(5) *Type of request:* Extension of a currently approved collection.

(6) *Respondents:* Individuals or households.

(7) *Estimated annual number of respondents:* 3,000.

(8) *Total annual responses:* 3,000.

(9) *Total annual reporting hours:* 300.

(10) *Collection description:* The collection obtains information about aged annuitants between 75 and 104 years of age. These annuitants may no longer be competent or their death may not have been reported. Under the Railroad Retirement Act, the Railroad Retirement Board may pay benefits to someone other than the annuitant if it is in the annuitant's interest. The RRB must terminate benefits to a deceased annuitant.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the form and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–2092 and the OMB reviewer, Laurie Schack (202–395–7316), Office of Management and Budget, Room 10230, New Executive Office Building, Washington, D.C. 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 99–13405 Filed 5–25–99; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41419; File No. SR–DTC–99–09]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating To Fees and Charges

May 18, 1999.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on April 1, 1999 The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change revises the fees associated with DTC's fee schedule for DTC's transfer agent drop service (''TAD service'').

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

DTC's TAD service provides transfer agents located outside of New York City with a central location within Manhattan for the receipt of securities from banks, broker-dealers, depositories, and shareholders.[3] The proposed rule change increases the monthly service fee for DTC's TAD service from $500 to $1000 effective May 3, 1999. DTC continually strives to align its service fees with estimated service costs, and this revision is a part of that effort.

DTC believes that the proposed rule change is consistent with Section 17A(b)(3)(D) of the Act[4] and the rules and regulations thereunder because it will more equitably allocate fees among DTC's participants and the other parties that use DTC's TAD service.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No comments on the proposed rule change were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[5] and pursuant to Rule 19b–4(f)(2)[6] promulgated thereunder because the proposal changes a due, fee, or other charge imposed by DTC. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necesary 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

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by DTC.

[3] For a more detailed description of the TAD service, refer to Securities Exchange Act Relase No. 37562 (August 13, 1996), 61 FR 43283 [File No. SR–DTC–96–09] (order approving proposed rule change).

[4] 15 U.S.C. 78q–1(b)(3)(D).

[5] 15 U.S.C. 78s(b)(3)(A)(ii).

[6] 17 CFR 240.19b–4(f)(2).

Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of such filing also will be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR–DTC–98–09 and should be submitted by June 16, 1999.

For the Commission by the Divivision of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–13301 Filed 5–25–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41418; File No. SR–DTC–99–04]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Regarding Revisions to MBS Division Rules

May 18, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on March 15, 1999 The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change revises the rules of DTC's MBS Division to comply with the current financial reporting practices of existing MBS Division participants and potential applicants.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.[2]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to make the rules of the MBS Division consistent with current practice in the areas of financial reporting of existing MBS participants and potential applicants.

The rule change revises Sections 7(b) and 8(b) of Article IV, Rule 1, to clarify that the quarterly financial reports required by appropriate federal or state regulators, such as call reports for banks and FOCUS reports for broker-dealers, can be used to satisfy the requirement in Sections 7(b) and 8(b) for the submission of ''unaudited Financial Statements''.

The rule change also revises Section 7(c) of Article IV, Rule 1, to eliminate the requirement that the chief executive officer or chief financial officer of a potential applicant submit a certificate stating that no material adverse changes have occurred in the applicant's financial condition since the applicant submitted the financial statement required by other provisions in MBS Division rules. The MBS Division believes this requirement is unnecessary in light of DTC's access to other sources of information concerning MBS Division applicants.

DTC believes that the proposed rule change is consistent with Section 17A(b)(3)(A) of the Act[3] and the rules and regulations thereunder because, in accordance with the Commission's recommendations, the proposal conforms DTC's rules to current financial reporting practices and MBS division rules to DTC's rules generally.[4]

B. Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No comments on the proposed rule change have been solicited, and no written comments have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(i) of the Act[5] and pursuant to Rule 19b–4(f)(1)[6] promulgated thereunder because the proposal constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of DTC.

All submissions should refer to File No. SR–DTC–99–04 and should be submitted by June 16, 1999.

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[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by DTC.

[3] 15 U.S.C. 78q–1(b)(3)(A).

[4] DTC's rules affecting non-MBS Division participants have no similar requirements.

[5] 15 U.S.C. 78s(b)(3)(A)(i).

[6] 17 CFR 240.19b–4(f)(1).

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–13356 Filed 5–25–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release 34–41427; File No. SR–MCC–99–01]

Self-Regulatory Organizations; Midwest Clearing Corporation; Notice of Filing of a Proposed Rule Change Regarding Sponsored Account Fund Contributions

May 19, 1999.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on February 26, 1999, the Midwest Clearing Corporation (''MCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change (File No. SR–MCC–99–01) as described in Items I, II, and III below, which items have been prepared primarily by MCC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will increase the minimum contribution that sponsored participants are required to make to MCC's sponsored account fund.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, MCC 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. MCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

MCC sponsors accounts (''sponsored accounts'') for certain eligible Chicago Stock Exchange specialists, floor brokers, and market makers (''sponsored participants'') to provide them with access to the clearance, settlement, and depository services of a qualified clearing agency.[3] To cover any losses that MCC may incur from operating the sponsored accounts, MCC requires sponsored participants to contribute to a sponsored account fund. A sponsored participant's required contribution to the sponsored account fund currently is the greater of $15,000 (''minimum contribution'') or 110% of the amount calculated pursuant to the formula of NSCC and DTC (''alternative contribution'')[4]

According to MCC, both NSCC and DTC require a minimum deposit of $10,000.[5] Therefore, the current minimum amount a sponsored participant must contribute to the sponsored account fund is $22,000, which is based on the alternative contribution formula.

Under the proposed rule change, the minimum contribution will increase from $15,000 to $150,000. As a result, the new required contribution will be $150,000, which will be based on the minimum contribution amount. MCC believes the increase is necessary due to an increased volume of transactions cleared through the sponsored accounts and increased market volatility.

The increase will be phased-in over a twelve-month period. To announce the actual phase-in dates, MCC will issue an administrative bulletin no later than thirty days after the Commission's order approving the proposal. The first phase-in date will be no more than 60 days from the date the bulletin is published and will increase the minimum contribution to $50,000. The second and third phase-in dates will be six months and twelve months from the initial phase-in date and will increase the minimum contribution to $100,000 and $150,000, respectively.

MCC believes the proposed rule change is consistent with Section 17A(b)(3)F)[6] of the Act and the rules and regulations thereunder because it will facilitate the prompt and accurate clearance and settlement of securities transactions and because it will assure the safeguarding of the securities and funds in MCC's custody or control or for which MCC is responsible.

(B) Self-Regulatory Organization's Statement on Burden on Competition

MCC 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

MCC has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which MCC consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should fix six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, D.C. 20549. Copies of such

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by MCC.

[3] MCC uses the services of two qualified clearing agencies on behalf of its sponsored participants: National Securities Clearing Corporation (''NSCC'') and The Depository Trust Company (''DTC'').

[4] The formula for the alternative contribution is based on the participant's use of MCC's services or those of a qualified clearing agency. The proposed rule change does not affect the alternative contribution calculation.

[5] *See* Letter from Paul B. O'Kelly, Executive Vice President, Market Regulation and Legal, Chicago Stock Exchange (March 19, 1999).

[6] 15 U.S.C. 78q–1(b)(3)(F).

filing also will be available for inspection and copying at the principal office of MCC. All submissions should refer to File No. SR–MCC–99–01 and should be submitted by June 16, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–13302 Filed 5–25–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41422; File No. SR–OCC–99–06]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to the Purchase of OCC Stock by Participant Exchanges and the Rights of Participant Exchanges on Liquidation of OCC

May 18, 1999.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on March 15, 1999, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Under the proposed rule change, OCC will update the provisions of its Certificate of Incorporation, By-Laws, and Stockholders Agreement relating to the purchase of OCC stock by participant exchanges and the rights of those exchanges in the event of OCC's liquidation.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC 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. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The rule change would make two substantive changes. First, it would increase the maximum purchase price for OCC stock from $333,333 to $1,000,000 per exchange. Second, upon liquidation of OCC it would effectively limit distributions to exchanges that first became stockholders after December 31, 1998, to the amounts that such exchanges paid for their stock plus a pro rata share of any increase in OCC's retained earnings after December 31, 1998.

Increase in Maximum Purchase Price

Article VII, Section 2 of OCC's By-Laws provides that an options exchange that wishes to become a participant in OCC must purchase 5,000 shares of Class A Common Stock and 5,000 shares of Class B Common Stock of OCC.[3] Currently, the price is an amount equal to book value as of the close of the preceding month but not less than $250,000 nor more than $333,333. As of December 31, 1998, the book value of 10,000 shares of OCC stock was $6,365,100 per share so the effective purchase price is the maximum price of $333,333.

The $333,333 maximum dates from 1975, when OCC (then named Chicago Board Options Exchange Clearing Corporation) became the common clearing facility for listed options. It has not been reconsidered since that time. In view of the length of time that has elapsed since the present maximum was fixed and the prospect that new options markets may seek to become participant exchanges of OCC,[4] OCC engaged Deloitte & Touche, LLP (''Deloitte'') to recommend a fair price for participation in OCC.

Using a variety of valuation methodologies and substantially discounting book value to reflect lack of control and lack of marketability, Deloitte arrived at an indicated value of $1,080,000 for a 20% interest in OCC. The proposed rule change would increase the maximum price for an interest in OCC to $1,000,000, which approximates the amount recommended by Deloitte.

The $1,000,000 amount also approximates the value in 1999 dollars of $333,333 in 1975.[5] The present participant exchanges acquired their stock in OCC between 1973 and 1976. Increasing the maximum price to $1,000,000 would tend to equalize the investment required of new exchanges with the investments made by OCC's present participant exchanges in the mid-1970's, expressed in 1999 dollars.

OCC's present rules specify a minimum purchase price of $250,000 if the book value of a proportionate interest in OCC would be less than that amount. Because the book value of a proportionate interest in OCC greatly exceeds $250,000 and is likely to continue to do so, the proposed rule change would eliminate the minimum price as unnecessary.

Change in Liquidation Rights

Under OCC's present charter, if OCC were to liquidate, the holders of Class A Common Stock would be entitled to receive the par value of their shares and the balance of OCC net assets would be distributed to the holders of Class B Common Stock. Because the purchase price of Class B Common Stock is capped at a level substantially below book value, the current liquidation scheme would provide a potential windfall to new stockholders. If a new exchange purchased stock either for the present maximum of $33.33 per share or the proposed maximum of $100.00 per share and if OCC then liquidated, each holder of Class B Common Stock, including the new exchange, would be entitled to receive more than $500.00 per share on liquidation. OCC has no intention of liquidating. Nevertheless, the outcome if OCC did liquidate would be unfair to those exchanges that were stockholders while OCC was accumulating its present stockholders' equity.

The proposed rule change would address this potential inequity by establishing a new scheme for distribution of OCC's net assets on liquidation. Under the new scheme, holders of Class A Common Stock and Class B Common Stock would first be paid the par value of their shares ($10.00 per share). Next, each holder of

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by OCC.

[3] The holders of Class A Common Stock elect OCC's member directors. The holders of Class B Common Stock voting together as a class elect OCC's public and management directors. Each exchange holds a separate series of Class B Common Stock entitling it to elect one exchange director.

[4] *Cf.* ''Fledgling Electronic Options Exchange Files with SEC for Registration as National Bourse,'' The Wall Street Journal, Feb. 3, 1999, at C 11.

[5] Based on the All Urban Consumer CPI, $333,333 on January 1, 1975, would amount to $1,009,932 in 1999. Using the General Consumer Price Index, $333,333 on January 1, 1975, would amount to $1,056,518 in 1999.

Class B Common Stock would receive a distribution of $1,000,000, allowing it to recover the value of its investment in 1998 dollars. Next, an amount equal to OCC's stockholders' equity at December 31, 1998, minus the distributions described in the two preceding sentences would be distributed to those exchanges that acquired their Class B Common Stock before December 31, 1998. Finally, any excess assets (*i.e.*, post-1998 retained earnings) would be distributed equally to all holders of Class B Common Stock. The effect would be to allow each exchange to recover its investment but to reserve OCC's present retained earnings for those exchanges that were stockholders during the period when the earnings were being accumulated.

Technical and Conforming Changes

The last sentence of Article VII, Section 2 of the By-Laws would be revised to eliminate a circularity. That provision currently states that if OCC fails or is unable to purchase a stockholder's shares when required under the Stockholders Agreement, the stockholders may sell its shares ''to a person who is qualified under Section 1 of this Article VII for participation in [OCC] as an 'Exchange' and who is not then a stockholder of the Corporation.'' However, Section 1 of Article VII provides that in order to be qualified for participation in OCC as an Exchange, a securities exchange or securities association must already have purchased stock in OCC. The proposed rule change would eliminate the circularity by allowing the stockholders to sell its shares to any national securities exchange or national securities association that had effective rules for the trading of options. Conforming changes would be made in the Stockholders Agreement.

Article VII, Section 3 would be amended to reflect previous rule changes providing for public directors. It would also be amended to eliminate an obsolete requirement that the stockholders renew their voting agreement every ten years.

Article VII, Section 4 would be amended to reflect the fact that the Participant Exchange Agreement between OCC and its participant exchanges now includes provisions relating to Rule 9b–1 options disclosure documents.

Section 10(a) of the Stockholders Agreement would be amended to eliminate obsolete material and to increase, proportionately with the proposed increase in the purchase price of OCC stock, the dollar discounts that would apply if OCC found it necessary to repurchase a participant exchange's stock within six years of the date when the stock was acquired. Section 12 of the Stockholders Agreement, which is obsolete, would be deleted in its entirety.

OCC believes that the proposed rule change is consistent with Section 17A of the Act[6] and the rules and regulations thereunder because it provides for a fair valuation of OCC's stock on its acquisition and liquidation.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which OCC consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of OCC. All submissions should refer to File No. SR–OCC–99–06 and should be submitted by June 16, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–13303 Filed 5–25–99; 8:45 am]

BILLING CODE 8010–01–M

[6] 15 U.S.C. 78q–1.

[7] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Notice 3066]

Office of the Deputy Assistant Secretary for Energy, Sanctions, and Commodities; Receipt of Application for a Permit for Pipeline Facilities To Be Constructed and Maintained on the Borders of the United States

AGENCY: Department of State.

SUMMARY: This is a correction to **Federal Register** Public Notice 3049 of May 4, 1999 (published at 64 FR 24689, May 7, 1999). The Department of State has received an application from the Penn Octane Corporation requesting a permit, pursuant to Executive Order 11423 of August 16, 1968, as amended by Executive Order 12847 of May 17, 1993, authorizing Penn Octane Corporation, in a joint venture with Cowboy Pipeline Services Company International, to construct, connect, operate and maintain two pipelines originating in the Port of Brownsville District, Texas and crossing the International Boundary (Rio Grande River) between Cameron County, Texas and the State of Tamaulipas, Mexico. The pipelines to be constructed would be used to transport liquid petroleum gas (LPG) and refined petroleum products (diesel/gasoline) from the United States to Mexico. Penn Octane Corporation is a publicly held company headquartered in Los Angeles California. The proposed pipelines will connect a currently existing pipeline in Cameron County, Texas with a proposed storage and distribution terminal in Tamaulipas, Mexico which will be constructed and operated by Penn Octane of Mexico.

DATES: Interested parties are invited to submit, in duplicate, comments relative to this proposal on or before June 20, 1999.

FOR FURTHER INFORMATION CONTACT: Matt McManus, Division Chief, Energy Producing Countries, Department of State, Washington, D.C. 20520. (202) 647–3423.

Dated: May 19, 1999.

Matthew McManus,

Division Chief.

[FR Doc. 99–13214 Filed 5–25–99; 8:45 am]

BILLING CODE 4710–07–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301–119]

Initiation of Section 302 Investigation and Request for Public Comment: Practices of the Government of Canada and of the Province of Ontario Regarding Measures Affecting Tourism and Sport Fishing

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of initiation of investigation; request for written comments.

SUMMARY: The United States Trade Representative (USTR) has initiated an investigation under section 302(a) of the Trade Act of 1974, as amended (the Trade Act) (19 U.S.C. 2412(a)), with respect to certain acts, policies and practices of the Government of Canada and of the Province of Ontario that may discriminate against U.S. providers of tourism services. USTR invites written comments from the public on the matters being investigated and the determinations to be made under section 304 of the Trade Act.

DATES: This investigation was initiated on April 29, 1999. Written comments from the public are due on or before noon on June 25, 1999.

ADDRESSES: Office of the United States Trade Representative, 600 17th Street, N.W., Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Mary Ryckman, Director for Canadian Affairs, (202) 395–3412, or Steven F. Fabry, Assistant General Counsel, (202) 395–3582.

SUPPLEMENTARY INFORMATION: On March 15, 1999, the Border Waters Coalition Against Discrimination in Services Trade filed a petition pursuant to section 302(a) of the Trade Act alleging that certain acts, policies and practices of the Government of Canada and the Province of Ontario are actionable under section 301.

In particular, the petition alleges that Ontario impairs the ability of Minnesota tourist establishments (fishing resorts, fishing guides, outfitters, and others) to compete against their Canadian counterparts by prohibiting U.S. recreational fishermen from keeping the fish that they catch if the fishermen lodge on the Minnesota side of certain lakes that straddle the U.S.-Canadian border. U.S. fishermen who lodge instead in Ontario tourist establishments are permitted to keep their catch. The petition alleges that, as a result, U.S. resorts, fishing guides, and other businesses tied to sport fishing suffer discrimination. The petition further alleges that Canadian immigration officials require U.S. fishing guides to obtain Canadian work authorizations to guide fishing trips into Canada. The petition also alleges that these acts, policies or practices have caused a sharp fall-off in the tourism industry, which directly or indirectly generates over $700 million in revenues per year in the Minnesota counties bordering Ontario.

Investigation and Consultations

On April 29, 1999, the USTR determined that an investigation should be initiated to determine whether certain acts, policies and practices of the Government of Canada and the Province of Ontario regarding sport fishing and tourism are actionable under section 301.

Pursuant to section 303(b) of the Trade Act, the USTR has postponed its request for consultations with the Government of Canada for the purpose of verifying or improving the petition to ensure an adequate basis for consultation.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the acts, policies and practices of Canada which are the subject of this investigation, the amount of burden or restriction on U.S. commerce caused by these acts, policies and practices, and the determinations required under section 304 of the Trade Act. Comments must be filed in accordance with the requirements set forth in 15 CFR 2006.8(b) and must be filed on or before noon on June 25, 1999. Comments must be in English and provided in twenty copies to: Sybia Harrison, Staff Assistant to the Section 301 Committee, Room 100, Office of the U.S. Trade Representative, 600 17th Street, NW, Washington, DC 20508.

Comments will be placed in a file (Docket 301–119) open to public inspection pursuant to 15 CFR 2006.13, except confidential business information exempt from public inspection in accordance with 15 CFR 2006.15. Confidential business information submitted in accordance with 15 CFR 2006.15 must be clearly marked ''BUSINESS CONFIDENTIAL'' in a contrasting color ink at the top of each page on each of 20 copies, and must be accompanied by a nonconfidential summary of the confidential information. The nonconfidential summary shall be placed in the file that is open to public inspection. Copies of the public version of the petition and other relevant documents are available for public inspection in the USTR Reading Room. An appointment to review the docket may be made by calling Brenda Webb at (202) 395–6186. The USTR Reading Room is open to the public from 9:30 a.m. to 12 noon and 1:00 p.m. to 4:00 p.m., Monday through Friday, and is located in Room 101.

William L. Busis,

Chairman, Section 301 Committee.

[FR Doc. 99–13417 Filed 5–25–99; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[FRA Docket No. EP–1, Notice 5]

Procedures for Considering Environmental Impacts

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of Updated Environmental Assessment Procedures.

SUMMARY: The FRA announces that it has revised its Procedures for Considering Environmental Impacts to update or eliminate outdated references to programs or statutory authorities that have been revised or that no longer exist, to correct inconsistencies with the Council on Environmental Quality's (CEQ) National Environmental Policy Act implementing regulations, and to improve public access to the process that governs FRA's compliance with the National Environmental Policy Act (NEPA) and related environmental and historic preservation laws and regulations.

DATES: These revised Environmental Procedures are effective on May 26, 1999.

FOR FURTHER INFORMATION CONTACT: William R. Fashouer, Office of the Chief Counsel, FRA, 1120 Vermont Avenue, N.W., Stop-10, Washington, D.C. 20590 (telephone: 202–493–6033).

SUPPLEMENTARY INFORMATION: On June 16, 1980, the FRA published its final ''Procedures For Considering Environmental Impacts'' (Environmental Procedures), 45 FR 40854 (1980). These Environmental Procedures established a process for assessing the environmental impact of actions and legislation proposed by the FRA and for the preparation and processing of documents based on such assessments. As a part of a larger DOT effort to increase intermodal planning and coordination, FRA is currently participating with the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), and the United States Coast Guard bridge permit program in evaluating a proposal for new joint environmental regulations that would cover all four DOT operating administrations in one regulation. In advance of this effort, which is still in the very early planning stage, FRA has decided to update its existing Environmental Procedures in several minor respects and to republish them in the **Federal Register** to facilitate public access to the Procedures.

The revised Environmental Procedures have not been substantively altered. FRA has sought to achieve four principal objectives in updating the Environmental Procedures. First, obsolete statutory references have been removed or updated and references to programs for which FRA no longer has authority and program offices that no longer exist have been eliminated. As an example, FRA transferred ownership of the Alaska Railroad to the State of Alaska in 1985. In the revised procedures, all references to the Alaska Railroad have been removed.

Second, the list of categorical exclusions in section 4(c) of the Procedures has been updated to reflect additions that FRA has made over the years pursuant to section 4(e) of the Procedures. Section 4(e) authorizes FRA to adopt additional categorical exclusions when the agency determines that particular classes of action do not have a significant environmental impact. The revised Procedures afford FRA with the opportunity to publish these additional categorical exclusions for the first time.

Third, inconsistencies with the CEQ NEPA Implementing Regulations (40 CFR part 1500) have been corrected. FRA's implementing procedures are required to be consistent with the CEQ Regulations.

Fourth, improved public access to the procedures will be achieved through a new publication in the **Federal Register**. Since the original procedures were published in the **Federal Register** in 1980, they are difficult for the public to access. By republishing the Procedures, FRA achieves much wider public availability, especially through the **Federal Register** Internet Access, which is not available for the original 1980 procedures.

Final Procedures Revisions

FRA has published these revised Environmental Procedures without notice and an opportunity for public comment because the agency's action simply makes updating and conforming revisions to FRA's existing procedures and does not substantively alter the process FRA follows for considering the environmental impact of its actions. The agency concluded that more detailed revisions to the agency's Environmental Procedures were not needed at this time in light of the effort described above to consider a joint surface transportation environmental regulations that would address the environmental process for several DOT Operating Administrations. The public will have an opportunity to participate in the formulation of this regulation if it goes forward.

In accordance with the above, FRA revises its Procedures for Considering Environmental Impacts as follows:

FEDERAL RAILROAD ADMINISTRATION

PROCEDURES FOR CONSIDERING ENVIRONMENTAL IMPACTS

TABLE OF CONTENTS

1. Purpose

This document establishes procedures for the assessment of environmental impacts of actions and legislation proposed by the Federal Railroad Administration (FRA), and for the preparation and processing of documents based on such assessments. These Procedures supplement the Council on Environmental Quality (CEQ) Regulations (40 CFR parts 1500 *et seq.*, hereinafter ''CEQ 1500'') and Department of Transportation (DOT) Order 5610.1C. Although only certain portions of the CEQ regulations or DOT Order are specifically referenced in these Procedures, the unreferenced portions also apply.

2. Authority

These Procedures implement the requirements of section 20 of DOT Order 5610.1C. This document establishes procedures for compliance by the FRA with the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*, hereinafter NEPA), especially NEPA section 102 (2)(C) (42 U.S.C. 4332(2)(C)); section 4(f) of the Department of Transportation Act (49 U.S.C. 303(c)); section 106 of the National Historic Preservation Act (16 U.S.C. 470(f)); section 309(a) of the Clean Air Act (42 U.S.C. 7609(a)); section 307(c)(2) of the Coastal Zone Management Act (16 U.S.C. 1456(c)(2)); section 2(a) of the Fish and Wildlife Coordination Act (16 U.S.C. 662(a)); section 7 of the Endangered Species Act (16 U.S.C. 1536); the Noise Control Act of 1972 (42 U.S.C. 4901 *et seq.*); and certain Executive Orders, regulations, and guidelines cited in this document which relate to environmental assessment and environmental documentation.

3. Definitions

The definitions contained within CEQ 1508 apply to these Procedures. Additional or expanded definitions are as follows:

(a) ''Administrator'' means the Federal Railroad Administrator.

(b) ''CEQ'' means the Council on Environmental Quality.

(c) ''EIS'' means an Environmental Impact Statement.

(d) ''EPA'' means the U.S. Environmental Protection Agency.

(e) ''FONSI'' means a Finding of No Significant Impact.

(f) ''4(f)-Protected Properties'' are any publicly-owned land of a public park, recreation area, or wildlife and waterfowl refuge of national, State or local significance or any land of an historic site of national, State, or local significance (as determined by the Federal, State, or local officials having jurisdiction over the park, area, refuge, or site) within the meaning of section 4(f) of the DOT Act (49 U.S.C. 303(c)).

(g) ''4(f)Determination'' is a report which must be prepared prior to the Administrator's approval of any FRA action which requires the use of any 4(f)-protected properties. This report documents both the supporting analysis and the finding required by section 4(f) of the DOT Act (49 U.S.C. 303(c)), that (1) there is no prudent and feasible

alternative to the use of such land, and (2) the proposed FRA action includes all possible planning to minimize harm to the park, recreational area, wildlife and waterfowl refuge, or historic site resulting from the use.

(h) ''FRA Action'' is an action taken by the Administrator or his or her delegate. FRA actions include grants, loans, financing through redeemable preference shares and loan guarantees, contracts, purchases, leases, construction, research activities, rulemaking, regulatory actions, approvals, certifications, and licensing. FRA actions also include actions only partially funded by FRA. FRA actions include FRA-sponsored proposals for legislation and favorable reports on proposed rail-related legislation, but do not include responses to Congressional requests for reports on pending legislation or appropriation requests.

(i) ''Program Office'' is an office within FRA which has been delegated the authority to administer a particular FRA action or program and which therefore bears primary responsibility for performing environmental assessments and preparing environmental documents in compliance with these Procedures.

(j) ''P–10'' refers to the Office of Environment, Energy, and Safety within the Department of Transportation.

4. Actions Covered

(a) General Rule. The requirements of sections 5 through 15 of these Procedures shall apply to all FRA actions which are determined to be major FRA actions in accordance with this section.

(b) Major FRA Actions. A major FRA action for purposes of these Procedures is any FRA action which does not come within one of the classes of actions categorically or otherwise excluded in subsections (c), (d) or (e) of this section. The Program Office shall consult with the FRA Office of Chief Counsel before determining that an FRA action is not a major FRA action under subsection (c). Any determination that an FRA action is not a major FRA action based on the application of the criteria in subsection (e) of this section shall be made in writing by the Program Office and reviewed for legal sufficiency by the FRA Office of Chief Counsel. The FRA Office of Chief Counsel will, in coordination with other FRA offices, annually review actions taken under this subsection to determine whether additions should be made to the classes of action excluded in subsection (c).

(c) Actions Categorically Excluded. Certain classes of FRA actions have been determined to be categorically excluded from the requirements of these Procedures as they do not individually or cumulatively have a significant effect on the human environment. In extraordinary circumstances, a normally excluded action may have a potentially significant environmental effect because it does not satisfy one or more of the criteria in subsection (e) of this section. In such case, the Program Office shall prepare the necessary environmental assessment and follow the appropriate FONSI or EIS process for that action. The following classes of FRA actions are categorically excluded:

(1) Administrative procurements (e.g. for general supplies) and contracts for personal services;

(2) Personnel actions;

(3) Financial assistance or procurements for planning or design activities which do not commit the FRA or its applicants to a particular course of action affecting the environment;

(4) Technical or other minor amendments to existing FRA regulations;

(5) Internal orders and procedures not required to be published in the **Federal Register** under the Administrative Procedure Act, 5 U.S.C. 552(a)(1);

(6) Changes in plans for an FRA action for which an environmental document has been prepared, where the changes would not alter the environmental impacts of the action;

(7) Rulemakings issued under section 17 of the Noise Control Act of 1972, 42 U.S.C. 4916;

(8) State rail assistance grants under 49 U.S.C. 22101 *et seq.* for rail service continuation payments and acquisition, as defined in 49 CFR 266;

(9) Guarantees of certificates for working capital under the Emergency Rail Services Act (45 U.S.C. 661 *et seq.*);

(10) Hearings, meetings, or public affairs activities;

(11) Maintenance of: existing railroad equipment; track and bridge structures; electrification, communication, signaling, or security facilities; stations; maintenance-of-way and maintenance-of-equipment bases; and other existing railroad-related facilities. For purposes of this exemption ''maintenance'' means work, normally provided on a periodic basis, which does not change the existing character of the facility, and may include work characterized by other terms under specific FRA programs;

(12) Temporary replacement of an essential rail facility if repairs are commenced immediately after the occurrence of a natural disaster or catastrophic failure;

(13) Operating assistance to a railroad to continue existing service or to increase service to meet demand, where the assistance will not result in a change in the effect on the environment;

(14) State rail assistance grants under 49 U.S.C. 22101 *et seq.* for relocation costs as that term is defined in 49 C.F.R. Part 266, where the relocation involves transfer of a shipper to a site zoned for the relocated activity. This categorical exclusion shall not apply to the relocation of a shipper involved in the transportation of any material classified as a hazardous material by DOT in 49 CFR Part 172;

(15) Financial assistance for the construction of minor loading and unloading facilities, provided that projects included in this category are consistent with local zoning, do not involve the acquisition of a significant amount of land, and do not significantly alter the traffic density characteristics of existing rail or highway facilities;

(16) Minor rail line additions including construction of side tracks, passing tracks, crossovers, short connections between existing rail lines, and new tracks within existing rail yards provided that such additions are not inconsistent with existing zoning, do not involve acquisition of a significant amount of right of way, and do not significantly alter the traffic density characteristics of the existing rail lines or rail facilities;

(17) Acquisition of existing railroad equipment, track and bridge structures, electrification, communication, signaling or security facilities, stations, maintenance of way and maintenance of equipment bases, and other existing railroad facilities or the right to use such facilities, for the purpose of conducting operations of a nature and at a level of use similar to those presently or previously existing on the subject properties;

(18) Research, development and/or demonstration of advances in signal, communication and/or train control systems on existing rail lines provided that such research, development and/or demonstrations do not require the acquisition of a significant amount of right-of-way, and do not significantly alter the traffic density characteristics of the existing rail line;

(19) Improvements to existing facilities to service, inspect, or maintain rail passenger equipment, including expansion of existing buildings, the construction of new buildings and outdoor facilities, and the reconfiguration of yard tracks; and

(20) Promulgation of railroad safety rules and policy statements that do not result in significantly increased emissions of air or water pollutants or

noise or increased traffic congestion in any mode of transportation.

(d) Other Actions-Excluded in Accordance with CEQ Regulations. The following classes of actions have been determined to be actions not covered by NEPA as defined in CEQ 1500.6 and 1508.18(a):

(1) Operating and capital grants to Amtrak. These grants are excluded because NEPA does not apply to requests for appropriations and FRA has no discretion to withhold these grants at the funding stage if they are in accordance with the spending plan approved by Congress. Furthermore, FRA has no control over the use of such funds by Amtrak;

(2) Enforcement of safety regulations; and

(3) Issuance of emergency orders.

(e) Criteria for Exclusion of Actions. A class of FRA action not excluded under subsections (c) and (d) of this section may nevertheless be excluded from the requirements for ''major FRA actions'' in these Procedures if it satisfies all of the following criteria:

(1) The action is not judged to be environmentally controversial from the point of view of people living within the environment affected by the action or controversial with respect to the availability of adequate relocation housing;

(2) The action is not inconsistent with any Federal, State, or local law, regulation, ordinance, or judicial or administrative determination relating to environmental protection;

(3) The action will not have any significant adverse impact on any natural, cultural, recreational, or scenic environment(s) in which the action takes place, or on the air or water quality or ambient noise levels of such environment(s);

(4) The action will not: use 4(f)-protected properties; adversely affect properties under section 106 of the National Historic Preservation Act; involve new construction located in a wetlands area; or affect a base floodplain;

(5) The action will not cause a significant short-or long-term increase in traffic congestion, or other significant adverse environmental impact on any mode of transportation;

(6) The action is not an integral part of a program of actions which, when considered separately, would not be classified as major FRA actions, but when considered together would be so classified; and

(7) Environmental assessment or documentation is not required by any Federal law, regulation, guideline, order, or judicial or administrative determination other than these Procedures.

(f) Class of Actions. A general class of major FRA actions, or a general class of Federally-related actions at least one of which is a major FRA action, may be covered by a single environmental assessment and subsequent documentation where the environmental impacts of all the actions (and their alternatives) are substantially similar.

(g) Programmatic Actions.

(1) A programmatic FRA action, consisting of a group of FRA actions or a broad action composed of elements which are themselves FRA actions but where no single action would be taken except in conjunction with the other related actions, shall be treated as a separate major FRA action for purposes of these Procedures. Decisions on related rail facilities, e.g. connecting lines of a railroad or consolidations, should normally be considered a programmatic action.

(2) A programmatic environmental document should identify program level alternatives and assess the program-wide environmental impacts. To the extent information is available, it should also identify the alternatives to and impacts of component FRA actions within the program, and the implications on alternative transportation systems.

(3) Where a programmatic environmental document has been prepared, the FRA program office shall examine each component FRA action making up the program to determine, in accordance with subsection (b) of this section, whether the component action is a major FRA action, which has not been assessed in the programmatic document.

(4) For any component action which constitutes a major FRA action, the Program Office shall prepare such additional environmental documentation as may be required by these Procedures, unless the documentation prepared for the programmatic action satisfies the requirements of these Procedures for the component FRA action. In preparing the site specific or component action documentation, the Program Office shall reference and summarize the programmatic document and shall limit the discussion to the unique alternatives to and impacts of the site specific or component action.

5. Timing

(a) General. In general, the possible environmental effects of an FRA action must be considered at the earliest possible time along with technical and economic studies. For purposes of designating major decision points, FRA actions can be broken into three broad categories:

(1) ''Applications for Funding'' which include grants, cooperative agreements, loan guarantees, and financing through redeemable preference shares;

(2) ''FRA Initiated Actions'' which include proposed legislation, rulemakings, and R&D activities; and

(3) ''Direct FRA Projects'' which include the planning and building of Federal works such as the Northeast Corridor Improvement Project, or the acquisition, use and disposal of Federal land and real property.

(b) Applications For Funding. Appropriate environmental documentation shall be commenced no later than immediately after the application is received. (CEQ 1502.5(b)). The FONSI, EIS, or categorical exclusion determination, as appropriate, shall be completed prior to a decision by the Administrator on the approval of the application and shall accompany the application through the decision-making process. In the event the Administrator disapproves of an application prior to the completion of the FONSI or EIS, the FONSI or EIS need only be completed if the disapproval is based on environmental grounds.

(c) FRA Initiated Actions. Appropriate environmental documentation shall be commenced concurrently with any planning for the action. The FONSI, EIS, or categorical exclusion determination, as appropriate, shall be completed prior to a decision by the Administrator to implement an action and shall accompany the proposed legislation, rulemaking or R&D package through the decision-making process. Implementation includes submission of proposed legislation to the Office of Management and Budget, or procurement of an outside consultant or in-house start up of the R&D project. For informal rulemaking activities, the draft EIS should normally accompany the proposed rule.

(d) Direct FRA Projects. Appropriate environmental documentation shall be commenced at the feasibility analysis stage. (CEQ 1502.5(a)). Where a programmatic document has been prepared, the environmental document for each component action not adequately addressed in the programmatic document will be prepared along with design studies. The FONSI, EIS or categorical exclusion determination shall be completed prior to a construction decision and circulated to the Administrator as part of the decision-making process.

6. Joint Actions

(a) Joint Effort. Where one or more Federal agencies together with FRA either co-sponsor an action, or are directly involved in an action through funding, licenses, or permits, or are involved in a group of actions directly related because of functional interdependence or geographical proximity or both, or are involved in a single program, the Program Office shall seek to join all such agencies in performing a single joint environmental assessment and in preparing necessary environmental documentation. Consistent with the requirements of CEQ 1506.2 and 1506.5 an applicant shall, to the fullest extent possible, serve as a joint lead agency if the applicant is a State agency or local agency, and the proposed action is subject to State or local requirements comparable to NEPA.

(b) Lead Agency. Where the FRA joins with one or more other Federal agencies in the performance of an environmental assessment and in the preparation of environmental documentation, all agencies should agree to designate a single ''lead agency'' to supervise the effort. Any request by FRA for CEQ resolution of lead agency designation (CEQ 1501.5(e)) shall be made only after consultation with the FRA Office of Chief Counsel and notification to P–10. Where FRA has the primary Federal responsibility, the Program Office will act as the lead agency in accordance with CEQ 1501.6(a). The lead agency should consult with the other participating agencies to ensure that the joint effort makes the best use of areas of jurisdiction and of special expertise of the participating agencies, that the views of participating agencies are considered in the course of the environmental assessment and documentation process, and that the substantive and procedural requirements of all participating agencies are met. Requests for lead agency designation by other parties should be made to the FRA Office of Policy and Program Development, which will advise the appropriate Program Office and the FRA Office of Chief Counsel.

(c) Cooperating Agency. The FRA is responsible for substantive and procedural compliance with environmental laws, orders, and regulations. Where the FRA is a cooperating agency on a joint effort of environmental assessment and documentation, the Program Office shall perform the functions stated in CEQ 1501.6(b) and review the work of the lead agency to ensure that its work product will satisfy the requirements of the FRA under these Procedures. The Program Office may enter into a memorandum of understanding with the lead agency substituting the lead agency's content requirements for those in sections ll(h) and 14(a)-(u). If the lead agency is another component of DOT, the 4(f) content requirements in section 12(d) may also be substituted. For every major FRA action, however, the review and approval responsibilities of these Procedures must be met for any final environmental document.

7. Applicants

(a) General. Each applicant for FRA financial assistance or other major FRA action may be requested to perform an environmental assessment of the proposed FRA action and to submit documentation of that assessment with the application. An applicant may also be requested to submit a proposed draft EIS or proposed FONSI in connection with the application, or to act as a joint lead agency if the applicant is a State agency with state-wide jurisdiction or is a State or local agency, and the proposed action is subject to a State requirement comparable to NEPA.

(b) Information Required. Where an applicant is required to submit environmental documentation, the Program Office shall assist the applicant by specifying the types and amounts of information, consistent with these Procedures and the published regulations, if any, under which the application is being made. The Program Office shall work with potential applicants early in the process to assist in the development of information responsive to sections 10 through 14 of these Procedures.

(c) Premature Act by Applicant. The Program Office shall inform an applicant that the applicant may not take any major action, in expectation of approval of the application, prior to completion of the environmental documentation process by the FRA, as required by these Procedures.

(d) Applicant's Use of Consultants. An applicant may use consultants in the performance of an environmental assessment and in the preparation of proposed environmental documents, subject to approval of the selected consultant by the Program Office.

(e) FRA Responsibility. The FRA is responsible for substantive and procedural compliance with environmental laws, orders, and regulations, and cannot delegate this responsibility to applicants. The Program Office shall solicit comments from state and local governments and the public on the environmental consequences of any grant application. The Program Office that processes an application shall make its own evaluation of the environmental issues raised by the application. The Program Office shall review environmental documentation submitted in connection with an application to insure that it satisfies the requirements of these Procedures. An environmental document may be accepted by a Program Office after such review and shall then be considered to have been prepared by that office for purposes of sections 10 through 15 of these Procedures. When necessary to perform such review, the Program Office shall seek the advice of the FRA Office of Policy and Program Development and the FRA Office of Chief Counsel.

8. Consultants

(a) General. A Program Office may use consultants in the performance of environmental assessments and in the preparation of environmental documents.

(b) Conflicts of Interest. A Program Office shall exercise care in selecting consultants, and in reviewing their work, to ensure that their analysis is complete and objective. Contractors shall execute a disclosure statement prepared by the Program Office, specifying that they have no financial or other interest in the outcome of the project.

(c) FRA Responsibility. The FRA is responsible for substantive and procedural compliance with environmental laws, orders, and regulations, and cannot delegate this responsibility to consultants. The Program Office that contracts with a consultant shall make its own evaluation of the environmental issues raised by the proposed action. The Program Office shall review any assessments performed and any documents prepared by a consultant to ensure that they satisfy the requirements of these Procedures. When necessary to the performance of its review, the Program Office shall seek the advice of the FRA Office of Policy and Program Development and of the FRA Office of Chief Counsel. An environmental document accepted by a Program Office pursuant to this section shall be considered to have been prepared by that office for purposes of sections 10 through 15 of these Procedures.

9. Citizen Involvement

(a) Policy. Citizen involvement is encouraged at every stage of the environmental assessment of a proposed FRA action.

(b) Procedures. After a Program Office has made the decision to prepare a draft

EIS, the Program Office shall implement the following procedures:

(1) Develop, in cooperation with the FRA Public Affairs Office, a list of interested parties, including Federal, regional, State, and local authorities, environmental groups, individuals, and business, public service, education, labor, and community organizations. The ''List of Federal Agencies and Federal-State Agencies with Jurisdiction by Law or Special Expertise on Environmental Quality Issues'', published by CEQ, should be consulted.

(2) Publish a notice of intent in the **Federal Register**, in accordance with CEQ 1501.7 and 1508.22, and notify directly those officials, agencies, organizations, and individuals with particular interest in the proposal.

(3) Circulate the draft EIS to interested parties and to depositories, such as public libraries, together with an invitation to comment on the draft EIS.

(4) Publicize the availability of the draft EIS by press release, in coordination with the FRA Public Affairs Officer, by advertisement in local newspapers of general circulation, or by other suitable means. The Environmental Protection Agency (EPA) will normally publish a notice of availability in the **Federal Register**. If one or more alternative(s) include significant encroachment on a floodplain, the notice shall make reference to that fact.

(5) If necessary or desirable, as determined in consultation with the FRA Office of Chief Counsel, using the criteria in CEQ 1506.6(c), hold a hearing or hearings on the draft EIS. If a hearing is held, the draft EIS shall be made available at least 30 days prior to the hearing.

(6) Respond to all responsible comments in the final EIS in accordance with section 13(c)(11) of these Procedures and provide copies of the final EIS to all who commented on the draft.

(c) List of Contacts. Interested persons can get information on the FRA environmental process and on the status of EIS's issued by the FRA from: Office of Policy and Program Development, Federal Railroad Administration, 1120 Vermont Avenue, N.W., Stop 15, Washington, D.C. 20590; telephone (202) 493–6400. The FRA Office of Policy and Program Development will contact the appropriate Program Office if additional information is required.

10. Environmental Assessment Process

(a) Policy. The process of considering the environmental impacts of a proposed major FRA action should be begun by or under the supervision of the Program Office at the earliest practical time in the planning process for the proposed action and shall be considered along with technical and economic studies. To the fullest extent possible, steps to comply with all environmental review laws and regulations shall be undertaken concurrently.

(b) Scope. The process of considering environmental impacts should begin by identifying all reasonable alternatives to the proposed action, including ''no action'' and including mitigation measures not incorporated into the design of the proposed action. It is entirely proper that the number of alternatives being considered should decrease as the environmental consideration process proceeds and as analysis reveals that certain alternatives would in fact be unreasonable. The relevant environmental impacts of all alternatives should be identified and discussed, including both beneficial and adverse impacts; impacts which are direct, indirect, and cumulative; and impacts of both long and short-term duration; and mitigation measures that would be included for each alternative. Consultation with appropriate Federal, State, and local authorities, and to the extent necessary, with the public, should be begun at the earliest practicable time. The following aspects of potential environmental impact should be considered:

(1) Air quality;
(2) Water quality;
(3) Noise and vibration;
(4) Solid waste disposal;
(5) Ecological systems;
(6) Impacts on wetlands areas;
(7) Impacts on endangered species or wildlife:
(8) Flood hazards and floodplain management;
(9) Coastal zone management;
(10) Use of energy resources;
(11) Use of other natural resources, such as water, minerals, or timber;
(12) Aesthetic and design quality impacts;
(13) Impacts on transportation: of both passengers and freight; by all modes, including the bicycle and pedestrian modes; in local, regional, national, and international perspectives; and including impacts on traffic congestion;
(14) Possible barriers to the elderly and handicapped;
(15) Land use, existing and planned;
(16) Impacts on the socioeconomic environment, including the number and kinds of available jobs, the potential for community disruption and demographic shifts, the need for and availability of relocation housing, impacts on commerce, including existing business districts, metropolitan areas, and the immediate area of the alternative, and impacts on local government services and revenues;
(17) Environmental Justice;
(18) Public health;
(19) Public safety, including any impacts due to hazardous materials;
(20) Recreational opportunities;
(21) Locations of historic, archeological, architectural, or cultural significance, including, if applicable, consultation with the appropriate State Historic Preservation Officer(s);
(22) Use of 4(f)-protected properties; and
(23) Construction period impacts.

(c) Depth. The environmental consideration process should seek to quantify each impact identified as relevant to the proposed action and to each alternative. Such quantification should properly develop, over the course of the environmental impact process, from a rough order-of-magnitude estimate of impact to finer and more precise measurements. The depth of analysis of each impact should be guided by the following factors:

(1) The likely significance of the impact;
(2) The magnitude of the proposed action or an alternative action;
(3) Whether the impact is beneficial or adverse; and
(4) Whether and to what extent the impact has been assessed in a prior environmental document.

(d) Environmental Assessment. An environmental assessment shall be prepared, in accordance with CEQ 1508.9, prior to all major FRA actions. The environmental assessment shall be used to determine the need to prepare either a FONSI or an EIS for the proposed action, in accordance with subsection (e) of this section. An environmental assessment need not be prepared as a separate document where the Program Office or an applicant has already decided to prepare an EIS for the proposed action. Evidence of consultation with appropriate Federal, State, and local authorities is especially desirable as a part of the environmental assessment. The Program Office is encouraged to seek the advice of the FRA Office of Policy and Program Development and the FRA Office of Chief Counsel as to the sufficiency of the environmental assessment.

(e) Determination Based on the Environmental Assessment. On the basis of the environmental assessment, the Program Office shall determine: whether the proposed action will or will not have a foreseeable significant impact on the quality of the human environment; whether or not the proposed action will use 4(f)-protected

properties; whether or not the proposed action will occur in a wetlands area; and whether or not the proposed action will occur in a base flood plain. In making these four determinations, the Program Office shall seek the advice of the FRA Office of Chief Counsel and shall inform this advisory office of the ultimate determinations. Based on these four determinations, the Program Office shall take action in accordance with paragraphs (1) through (4) below, as applicable:

(1) If the Program Office determines that the proposed action will not have a foreseeable significant impact, the Program Office shall compile that determination and its supporting documentation into a FONSI and proceed in accordance with section 11 of these Procedures.

(2) If the Program Office determines that there is a foreseeable significant impact, it shall begin the scoping process (CEQ 1501.7) and proceed to prepare a draft EIS in accordance with sections 9 and 13 of these Procedures.

(3) If the Program Office determines that the proposed action contemplates using 4(f)-protected properties, it shall proceed in accordance with section 12 of these Procedures.

(4) If the Program Office determines that the proposed action will occur in a wetlands area or in a base floodplain, the Program Office shall comply with subsection 14(n)(6) or (8) of these Procedures, as applicable. If a FONSI is prepared, the reference in 14(n)(6) and (8) to final EIS should be read as reference to the FONSI.

11. Finding of No Significant Impact

(a) General. A FONSI shall be prepared for all major FRA actions for which an environmental impact statement is not required, as determined in accordance with section 10(e) of these Procedures.

(b) Decisionmaking on the Proposed Action. No decision shall be made at any level of authority of the FRA to commit the FRA or its resources to a major FRA action for which a FONSI must be prepared until a FONSI covering the action has been prepared and approved in accordance with this section.

(c) Staff Responsibilities.

(1) A FONSI, when required, shall be prepared by the Program Office and shall be signed by the official heading that office. The Program Office shall forward a copy to the Office of Policy and Program Development and a copy to the FRA Office of Chief Counsel.

(2) When requested by the Program Office, the FRA Office of Policy and Program Development shall review the FONSI and shall advise the Program Office of the consistency of the FONSI with FRA policies and programs.

(3) The FRA Office of Chief Counsel shall review every FONSI and shall advise the program office in writing as to the legal sufficiency of the FONSI.

(4) After complying with subsection (d)(2) of this section, the Program Office shall submit the FONSI to the Administrator concurrently with the advice obtained from the Office of Policy and Program Development, when applicable, and from the FRA Office of Chief Counsel.

(5) A FONSI may become final only upon approval by the Administrator. Title V program actions do not require a separate approving endorsement by the Administrator, where his/her signature on the formal financial assistance agreement approves the entire agreement package including the FONSI.

(d) Coordination.

(1) Normally an approved FONSI need not be coordinated in advance outside the FRA. Copies of the FONSI shall be made available to the public, to a Government agency, or to Congress upon request at any time.

(2) When the proposed action is, or is closely similar to, one which normally requires an EIS as identified in section 13(a) of these Procedures, or when the nature of the proposed action is one without precedent, the proposed FONSI shall be made available to the public for a period of not less than 30 days before the FONSI is finally approved and the action is implemented.

(e) 4(f) Determinations. A 4(f) determination, prepared according to section 12 of these Procedures, may be required for a proposed FRA action even though an EIS is not required. If so, the 4(f) determination shall be prepared concurrently with and integrated with the FONSI for purposes of the review process.

(f) Representations of Mitigation. Where a FONSI has represented that certain measures would be taken to mitigate adverse environmental impacts of an action, the FRA program office shall monitor the action and, as necessary, take steps to enforce the implementation of such measures. Where applicable, the Program Office shall include appropriate mitigation measures as a condition to financial assistance and as a provision of contracts. The program office shall, upon request, inform cooperating or commenting agencies on progress in carrying out mitigation measures they proposed and which were adopted by FRA, and shall also, upon request, make available to the public the results of relevant monitoring.

(g) Changes and Supplements. Where, in the development of an FRA action for which a FONSI was prepared, a significant change is made which would alter environmental impacts, or where significant new information becomes available regarding the environmental impacts of such an FRA action, the Program Office shall prepare an environmental assessment in order to determine whether, because of the changes or the new information, the proposed action will or will not have a foreseeable significant impact on the quality of the human environment. In making this determination, the Program Office shall seek the advice of the FRA Office of Chief Counsel. If, because of the change or the new information, the proposed action will have a foreseeable significant impact on the quality of the human environment, the Program Office shall prepare a draft EIS and proceed in accordance with sections 9 and 13 of these Procedures. If not, the Program Office shall prepare an appropriate supplement to the original FONSI.

(h) Contents of a FONSI. A FONSI shall include the environmental assessment in accordance with CEQ 1508.13. There is no prescribed format for FONSI's. A FONSI shall contain the following:

(1) Identification of the document as a FONSI;

(2) Identification of the FRA;

(3) The title of the action, including, if applicable, identification of the action as a legislative proposal;

(4) The Program Office which prepared the document;

(5) The month and year of preparation of the document;

(6) The name, title, address, and phone number of the person in the Program Office who should be contacted to supply further information about the document;

(7) A list of those persons or organizations assisting the Program Office in the preparation of the document;

(8) A description of the proposed action;

(9) A description of the alternatives considered;

(10) Environmental effects;

(11) To the extent necessary and practicable, evidence of compliance with all applicable environmental laws, e.g., a copy of letters from the State Historic Preservation Officer and the Advisory Council on Historic Preservation;

(12) A discussion of mitigation measures that will be used;

(13) A conclusion that the proposed action will have no foreseeable significant impact on the quality of the human environment; and

(14) Signature and date indicating the approval of the Administrator required by subsection (c) of this section.

12. 4(f) Determinations

(a) General. The Program Office shall obtain the approval of the Administrator for a 4(f) determination before any FRA action is taken which proposes to use 4(f) protected properties. The 4(f) determination shall be prepared concurrently with and shall be integrated with either a FONSI or an environmental impact statement, or for those projects classified as categorical exclusions, in a separate Section 4(f) determination.

(b) Staff Responsibilities.

(1) The Program Office shall determine whether or not a proposed action contemplates the use of 4(f)-protected properties. The Program Office shall seek the advice of the FRA Office of Chief Counsel in making this determination.

(2) If it is determined that the proposed action would use 4(f)-protected properties, the Program Office shall initiate consultations on the proposed action with the Department of the Interior and, if appropriate, with the Departments of Housing and Urban Development and of Agriculture. If State or locally-owned property is involved, the Program Office should also consult with the appropriate State or local authorities.

(3) The Program Office shall incorporate into its environmental assessment of the proposed action an analysis of whether or not there are any feasible and prudent alternatives to the proposed use of 4(f)-protected properties and of all possible planning measures which could be taken to minimize harm to such 4(f)-protected properties resulting from such use.

(4) If the Program Office determines on the basis of its analysis that there is no feasible and prudent alternative to the use in the proposed action of 4(f)-protected properties, it shall prepare a 4(f) determination for the action. The document shall evidence consultation with the Department of the Interior and, where applicable, with the Departments of Housing and Urban Development and of Agriculture. The Program Office shall forward a copy of the 4(f) determination to the FRA Office of Policy and Program Development and a copy to the office of Chief Counsel as part of the appropriate FONSI or EIS or as a separate document for those projects classified as categorical exclusions.

(5) When requested by the Program Office, the FRA Office of Policy and Program Development shall review the 4(f) determination and shall advise the Program Office as to the consistency of the 4(f) determination with FRA policies and programs.

(6) The FRA Office of Chief Counsel shall review every 4(f) determination and shall advise the Program Office in writing as to the legal sufficiency of the 4(f) determination.

(7) The Program Office shall submit the 4(f) determination to the Administrator concurrently with the advice obtained from the FRA Office of Policy and Program Development, when applicable, and from the FRA Office of Chief Counsel.

(8) A 4(f) determination may become final only upon approval by the Administrator.

(c) Representations of Mitigation. Where a 4(f)determination has represented that certain measures would be taken to implement the planning to minimize harm to 4(f)-protected properties, the Program Office shall monitor the action and, as necessary, take steps to enforce the implementation of such measures. Where applicable, the Program Office shall include appropriate mitigation measures as a condition to financial assistance and as a provision of contracts.

(d) Contents of a 4(f) Determination. There is no prescribed format for 4(f) determinations. The information required by Section 4(f) should normally be incorporated as an integral part of the environmental document rather than as a separate section. To the extent not already included in the environmental document, a 4(f) determination shall contain the following:

(1) Identification of the document as containing a 4(f) determination made pursuant to section 4(f) of the Department of Transportation Act, 49 U.S.C. 303(c).

(2) Identification of the FRA;

(3) The title of the action;

(4) The Program Office which prepared the document;

(5) The month and year of preparation of the document;

(6) A description of the proposed action in its entirety;

(7) A description of the 4(f)-protected properties proposed to be affected, including information about their size, uses, patronage, unique qualities, and relationship to other lands in the vicinity of the action; and an explanation of the significance of the properties as determined by the Federal, State, or local officials having jurisdiction thereof;

(8) A detailed description of the use which the FRA action proposes to make of the affected 4(f)-protected properties;

(9) A similarly detailed description of every reasonable alternative location, routing, or design to the one proposed, including the alternative of ''no action''. Each description should analyze, as appropriate, the technical feasibility, cost estimates (with figures showing percentage differences in-total project costs), the possibility of community or ecosystem disruption, and other significant environmental impacts of each alternative, so as to evidence that the financial, social, or ecological costs or adverse environmental impacts of each alternative other than that proposed would present unique problems or reach extraordinary magnitudes;

(10) A description of all planning undertaken to minimize harm to the 4(f)-protected properties from the proposed action. This should include a description of actions which will be taken to mitigate adverse environmental impacts, such as beautification measures, replacement of land or structures or their equivalents on or near their existing site(s), tunneling, cut and cover, cut and fill, treatment of embankments, planting, screening, installation of noise barriers, or establishment of pedestrian or bicycle paths;

(11) Evidence of concurrence or of efforts to obtain concurrence of the public official or officials having jurisdiction over the 4(f)-protected properties regarding the proposed action and the planning to minimize its harm;

(12) In a FONSI or a final EIS, evidence of consultation with the Department of the Interior and, where appropriate, with the Departments of Housing and Urban Development and of Agriculture;

(13) In a FONSI or a final EIS, a conclusion that there is no feasible and prudent alternative to the proposed use of 4(f)-protected properties and that the proposal includes all possible planning to minimize harm to such properties resulting from such use; and

(14) In a FONSI or a final EIS, signature and date indicating the approval of the Administrator as required by subsection (b)(8) of this section.

13. Environmental Impact Statement

(a) General. The FRA shall prepare and include a final EIS in every recommendation on proposals for major FRA actions significantly affecting the quality of the human environment, as determined in accordance with section 10 of these Procedures. There are no

actions which FRA has determined always require an EIS; however, an EIS shall be prepared for all major FRA actions significantly affecting the quality of the environment. This normally includes any construction of new major railroad lines or new major facilities or any change which will result in a significant increase in traffic.

(b) Decisionmaking on the Proposed Action. No decision shall be made at any level of FRA to commit the FRA or its resources to a major FRA action for which an EIS must be prepared until the later of the following dates:

(1) Thirty (30) days after a final EIS covering the action has been submitted to the EPA, as measured from the date the EPA publishes a notice of the final EIS's availability in the **Federal Register**; or

(2) Ninety (90) days after a draft EIS has been made available to the public, as measured from the date the EPA publishes a notice of the draft EIS's availability in the **Federal Register**. The Program Office may seek a waiver from the EPA to shorten these time limits for compelling reasons of national policy. In emergency circumstances, alternative arrangements can be made through CEQ. Any proposed waiver of time limits should be requested only after consultation with the FRA Office of Chief Counsel which will submit the request through P–10 to EPA or CEQ as appropriate.

(c) Staff Responsibilities and Timing.

(1) The Program Office shall begin the preparation of a draft EIS as soon as it determines, or the environmental assessment performed in accordance with section 10 of these Procedures discloses, that the proposed action will significantly affect the quality of the human environment.

(2) As soon as a decision to prepare a draft EIS has been made, if FRA is the lead or only agency, the Program Office, in consultation with the FRA Office of Chief Counsel, shall undertake the scoping process identified in CEQ 1501.7.

(3) In preparing a draft EIS, the Program Office shall perform such research and consultation as may be required in accordance with section 14 of these Procedures or as may be considered desirable as a result of the scoping process. The completed draft EIS shall be signed by the head of the Program Office. The Program Office shall forward a copy to the FRA Office of Policy and Program Development and a copy to the FRA Office of Chief Counsel.

(4) When requested by the Program Office, the FRA Office of Policy and Program Development shall review the draft EIS and shall advise the Program Office in writing as to the consistency of the draft EIS with FRA policies and programs.

(5) The FRA Office of Chief Counsel shall review every draft EIS and shall advise the program office in writing as to the legal sufficiency of the draft EIS.

(6) The Program Office shall submit the draft EIS to the Administrator concurrently with the advice obtained from the FRA Office of Policy and Program Development, when applicable, and from the FRA Office of Chief Counsel.

(7) A draft EIS may be formally released outside the FRA only after approval by the Administrator.

(8) The Program Office shall direct distribution of the draft EIS as follows: EPA (five copies); the Office of the Assistant Secretary of Transportation for Policy and International Affairs (two copies); all interested FRA regional offices; appropriate DOT Regional Representatives; the FRA Office of Policy and Program Development; the FRA Office of Chief Counsel; all Federal agencies which have jurisdiction by law or special expertise with respect to the environmental impacts of the proposed action; State and local government authorities and public libraries in the area to be affected by the proposed action; and all other interested parties identified during the preparation of the draft EIS pursuant to section 9(b)(1) of these Procedures.

(9) The draft EIS shall be made available for public and agency comment for at least 45 days from the Friday following the week the draft EIS was received by EPA. The time period for comments on the draft EIS shall be specified in a prominent place in the document, but comments received after the stated time period expires should be considered to the extent possible.

(10) Where a public hearing is to be held on the draft EIS, as determined in accordance with section 9(b)(5) of these Procedures, the draft EIS shall be made available to the public at least 30 days prior to the hearing.

(11) The Program Office shall consider all comments received on the draft EIS, issues raised through the citizen involvement process, and new information, and shall revise the text into a final EIS accordingly. (See CEQ 1503.4). If the proposed final EIS is not submitted to the Administrator within three years from the date of the draft EIS circulation, a written reevaluation of the draft shall be prepared to determine if the draft EIS remains applicable, accurate, and valid. If not, a supplement to the draft EIS or a new draft EIS shall be prepared and circulated as required by paragraphs (1) through (9) of this subsection. If the draft EIS remains applicable, accurate, and valid, the final EIS shall be signed by the head of the Program Office and copies forwarded to the FRA Office of Policy and Program Development and the FRA Office of Chief Counsel.

(12) When requested by the Program Office, the FRA Office of Policy and Program Development shall review the final EIS and shall advise the Program Office in writing as to the consistency of the final EIS with FRA policies and programs.

(13) The FRA Office of Chief Counsel shall review every final EIS and shall advise the Program Office in writing as to its legal sufficiency.

(14) The Program Office shall submit the final EIS to the Administrator concurrently with the advice obtained from the FRA Office of Policy and Program Development, when applicable, and the FRA Office of Chief Counsel.

(15) The final EIS may become final only upon approval by the Administrator.

(16) After approval by the Administrator, the Program Office shall direct distribution of the final EIS as follows: EPA (five copies); appropriate DOT Regional Representatives; all interested FRA regional offices; the FRA Office of Policy and Program Development; the FRA Office of Chief Counsel; State and local authorities and public libraries in the area affected by the proposed action; Federal agencies and other parties who commented substantively on the draft EIS in writing or at a public hearing; and all agencies, organizations, or individuals requesting copies.

(17) If major steps toward implementation of the proposed action have not commenced, or a major decision point for actions implemented in stages has not occurred within three years from the date of approval of the final EIS, a written reevaluation of the adequacy, accuracy, and validity of the final EIS shall be prepared, and a new or supplemental EIS prepared, if necessary. If major steps toward implementation of the proposed action have not occurred within the time frame, if any, set forth in the final EIS, or within five years from the date of approval of the final EIS, a written reevaluation of the adequacy, accuracy, and validity of the final EIS shall be prepared, and a new or supplemental EIS prepared, if necessary. A decision that a new or supplemental EIS is not necessary must be processed in accordance with paragraph (14) of this subsection (c).

(d) Legislative EIS. An approved draft legislative EIS may be forwarded to the appropriate Congressional committee(s) up to 30 days later than the proposed legislation. If a final EIS is prepared as required by CEQ 1506.8(b)(2), it shall be forwarded to the appropriate Congressional committee as soon as it becomes available. Comments on the draft EIS and FRA's responses thereto shall be forwarded to the appropriate Congressional committee(s).

(e) Changes and Supplements. Where, in the development of an FRA action for which a draft or final EIS has been prepared, a significant change is made which would alter environmental impacts, or where significant new information becomes available regarding the environmental impacts of such an FRA action, the Program Office shall prepare an appropriate supplement to the original draft or final EIS for that portion of the FRA action affected. Such a supplement shall be processed in accordance with paragraphs (3) through (17) of subsection (c) of this section. If a formal administrative record is required for any FRA action for which a supplemental EIS is prepared, the supplemental EIS shall be introduced into the formal administrative record. The Program Office, in consultation with the FRA Office of Chief Counsel, shall determine whether and to what extent any portion of the proposed action is unaffected by the planning change or new information. FRA decisionmaking on portions of the proposed action having utility independent of the affected portion may go forward regardless of the concurrent processing of the supplement.

(f) Representations of Mitigation. Where a final EIS has represented that certain measures would be taken to mitigate the adverse environmental impacts of an action, the FRA program office shall monitor the action and, as necessary, take steps to enforce the implementation of such measures. Where applicable, the Program Office shall include appropriate mitigation measures as a condition to financial assistance and as a provision of contracts. The program office shall, upon request, inform cooperating and commenting agencies on progress in carrying out mitigation measures they proposed and which were adopted by FRA and shall also, upon request, make available to the public the results of relevant monitoring.

(g) 4(f) Determinations. Where a 4(f) determination as well as an EIS is required for a proposed FRA action, it shall be prepared in accordance with section 12 of these Procedures and shall be integrated with the draft and final EIS.

(h) Contents of an EIS. The specific contents of both a draft and final EIS are prescribed by section 14 of these Procedures. Prescribed format for or page limitations on EIS's shall be those set out in CEQ 1502.7 and 1502.10. An EIS shall be prepared so as to focus on the significant issues, as identified by the environmental assessment and the process of public comment, and so as to avoid extraneous data and discussion. The text of an EIS should be written in plain language comprehensible to a lay person, with technical material gathered into appendices. Graphics and drawings, maps and photographs shall be used as necessary to clarify the proposal and its alternatives. The sources of all data used in an EIS shall be noted or referenced in the EIS.

14. Contents of an Environmental Impact Statement

To the fullest extent possible, the Program Office shall prepare draft environmental impact statements concurrently with and integrated with environmental impact analyses and related studies required by the various environmental review laws and Executive Orders listed in subsection (n) below.

In addition to the requirements of CEQ 1502.11 through 1502.18, and subject to the general provisions of section 13(h) of these Procedures, a draft or final EIS shall contain the following:

(a) If appropriate, identification of the document as containing a 4(f) determination made pursuant to section 4(f) of the Department of Transportation Act, 49 U.S.C. 303(c).

(b) If appropriate, a citation to section 106 of the National Historic Preservation Act, 16 U.S.C. 470(f).

(c) Identification of the FRA.

(d) The Program Office that prepared the document.

(e) The month and year of preparation of the document.

(f) In a draft EIS, the name and address of the person in the FRA to whom comments on the document should be addressed, and the date by which comments must be received to be considered.

(g) A list of those persons, organizations, or agencies assisting the FRA in the preparation of the document.

(h) In a draft EIS, a list of agencies, organizations, and persons to whom copies of the document are being sent.

(i) In a final EIS, a list of all agencies, organizations, or persons from whom comments were received on the draft EIS.

(j) A table of contents.

(k) A brief statement of the purpose and need to which the alternatives described in subsection (l) respond, including, where applicable, the legislative authority on which it is based; and the extent to which other Federal, State, or local agencies are funding or otherwise participating in or regulating the alternatives.

(l) A description of all reasonable alternative courses of action which could satisfy the purpose and need identified in subsection (k). The description should include the ''no action'' alternative and alternatives not currently within the authority of the FRA, as well as a description of feasible mitigation measures which have not been incorporated into the proposed action. The draft EIS may and the final EIS shall identify which alternative is the proposed action.

(m) A short description of the environment likely to be affected by the proposed action, by way of introduction to the environmental impact analysis, including a list of all States, counties, and metropolitan areas likely to be so affected.

(n) An analysis of the environmental impacts of the alternatives, including the proposed action, if identified. The discussion under each area of impact should cover the proposed action and all alternatives, even if only to point out that one or more alternatives would have no impact of that kind. Under each area of impact, the discussion should focus on alternatives which might enhance environmental quality or avoid some or all adverse impacts of the proposed action. Attachment 2 to DOT Order 5610.1C provides guidance on the contents of this section. Analysis should be focused on areas of significant impact: beneficial and adverse; direct, indirect, and cumulative; and both long- and short-term. There should be evidence of consultation with appropriate Federal, State and local officials. At a minimum, the following areas should be considered in the environmental analysis, although their discussion in the EIS is dependent on their relevance.

(1) Air quality. There should be an assessment of the consistency of the alternatives with Federal and State plans for the attainment and maintenance of air quality standards.

(2) Water quality. There should be an assessment of the consistency of the alternatives with Federal and State standards concerning drinking water, storm sewer drainage, sedimentation control, and non-point source discharges such as runoff from construction operations. The need for any permits under sections 402 and 404

of the Federal Water Pollution Control Act (33 U.S.C. 1342, 1344) for the discharge of dredged or fill material shall be discussed.

(3) Noise and vibration. The alternatives should be assessed with respect to applicable Federal, State, and local noise standards, especially those enforced by the FRA for railroad equipment, yards and facilities including 49 CFR Part 210 ''Railroad Noise Emission Compliance Regulations.''

(4) Solid waste disposal. The alternatives should be assessed with respect to State and local standards for sanitary landfill and solid waste disposal.

(5) Natural ecological systems. The EIS should assess both construction period and long-term impacts of the alternatives on wildlife and vegetation in the affected environment. Where an alternative proposes to control or modify a stream or other body of water in some way, it shall contain evidence of consultation with the U.S. Fish and Wildlife Service of the Department of the Interior and with the agencies exercising administration over the wildlife resources of affected States, as required by section 2(a) of the Fish and Wildlife Coordination Act, 16 U.S.C. 662(a).

(6) Wetlands. In accordance with E.O. 11990 (May 24, 1977), and DOT Order 5660.1A, the Program Office shall determine whether any of the alternatives will be located in a wetland area. If so, the procedures in DOT Order 5660.1A should be followed including consultation with the appropriate representative of the Department of the Interior, and with responsible Federal, State or local officials with special expertise, concerning the impacts of the proposal on the wetland areas affected. If the proposed action is located in a wetland area, the final EIS shall document a determination that there is no practicable alternative to such location, and that the proposed action includes all practicable measures to minimize harm to wetlands which may result from such use.

(7) Endangered species. If applicable, the EIS shall discuss the impacts of the alternatives on endangered or threatened species of wildlife. The Department of the Interior lists such species in 50 CFR Part 17. There should be evidence of consultation with the Department of the Interior as required by section 7 of the Endangered Species Act, 16 U.S.C. 1536.

(8) Flood hazard evaluation and floodplain management. In accordance with E.O. 11988 (May 24, 1977), and DOT Order 5650.2, the Program Office shall determine whether any of the alternatives will affect a base floodplain. Base floodplain limits shall be determined by using Department of Housing and Urban Development floodplain maps, or, if one or more are not available for a particular area, on the best available information. If one or more alternatives will affect a base floodplain, the draft EIS shall discuss: any risk associated with each such alternative; the impacts on natural and beneficial floodplain values; the degree to which the alternative supports incompatible development in the base floodplain; and the adequacy of the methods proposed to minimize harm. In the final EIS, this discussion should concentrate on the proposed action. If the proposed action involves a significant encroachment on a base floodplain, the final EIS shall contain a finding, made in writing by the Administrator, that the proposed significant encroachment is the only practicable alternative. This finding shall be supported by a description of why the proposed action must be located in the floodplain, including the alternatives considered and why they were not practicable and accompanied by a statement that the action conforms to applicable State and/or local floodplain protection standards. This finding shall be provided to interested parties. Guidance on the definition of significant encroachment and other matters is provided in DOT Order 5650.2.

(9) Coastal zone management. If applicable, the EIS should discuss to what extent the alternatives are consistent with approved coastal zone management programs in affected States, as required by section 307(c)(2) of the Coastal Zone Management Act. 16 U.S.C. 1456(c)(2).

(10) Production and consumption of energy. The EIS shall assess in detail any irreversible or irretrievable commitments of energy resources likely to be involved in each alternative and any potential energy conservation, especially those alternatives likely to reduce the use of petroleum or natural gas, consistent with the policy outlined in Executive Order 12185.

(11) Use of natural resources other than energy, such as water, minerals, or timber. The EIS shall assess in detail any irreversible or irretrievable commitments of these resources likely to be involved in each alternative.

(12) Aesthetic environment and scenic resources. The EIS should identify any significant changes likely to occur in the natural landscape and in the developed environment. The EIS should also discuss the consideration given to design quality, art, and architecture in project planning and development as required by DOT Order 5610.4.

(13) Transportation. The EIS should assess the impacts on both passenger and freight transportation, by all modes, from local, regional, national, and international perspectives. The EIS should include a discussion of both construction period and long-term impacts on vehicular traffic congestion.

(14) Elderly and handicapped. The EIS shall assess impacts of the alternatives on the transportation and general mobility of the elderly and handicapped.

(15) Land use. The EIS should assess the impacts of each alternative on local land use controls and comprehensive regional planning as well as on development within the affected environment, including, where applicable, other proposed Federal actions in the area. Where inconsistencies or conflicts exist, this section should describe the extent of reconciliation and the reason for proceeding notwithstanding the absence of full reconciliation. As required by 42 U.S.C. 4332(2)(D)(iv), the Program Office shall provide early notification to, and solicit the views of, any State or Federal land management entity with respect to any alternative which may have significant impacts upon such entity and, if there is any disagreement on such impacts, prepare a written assessment of such impacts and views for incorporation into the final EIS.

(16) Socioeconomic environment. The EIS should assess the number and kinds of available jobs likely to be affected by the alternatives. Also discussed should be the potential for community disruption or cohesion, the possibility of demographic shifts, and impacts on local government services and revenues. The need for and availability and adequacy of relocation housing should be assessed, using as a guide section 6 of Attachment 2 to DOT Order 5610.1C. The positive and negative consequences of each alternative on commerce in the community and its surrounding metropolitan area, specifically on existing business districts and the immediate project areas should be analyzed.

(17) Public health.

(18) Public safety. The EIS should assess the transportation or use of any hazardous materials which may be involved in the alternatives, and the level of protection afforded residents of the affected environment from construction period and long-term operations associated with the alternatives.

(19) Recreation areas and opportunities. Impacts of the alternatives on sites devoted to recreational activities should be assessed, including impacts on non-site-specific activities, such as hiking and bicycling, and impacts on non-activity-specific sites such as designated ''open space''. Where land acquired with Federal grant money such as Department of Housing and Urban Development ''open space'' funds or Bureau of Outdoor Recreation ''land and water conservation'' funds is involved, there should be evidence of consultation with the grantor agency concerning the proposed action, and of any approvals required by Section 6(f) of the Land and Water Conservation Fund Act (16 U.S.C. 460l-8(f)).

(20) Environmental Justice. The EIS should address environmental justice considerations as required by Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' and the DOT Order on Environmental Justice.

(21) Sites of historical, archeological, architectural, or cultural significance. In accordance with section 106 of the National Historic Preservation Act, 16 U.S.C. 470(f), the EIS shall identify all properties which may be affected by the alternatives that are included in or eligible for inclusion in the National Register of Historic Places. For a property not included in the National Register, the criteria for inclusion may be found in 36 CFR Part 60. There should be evidence of consultation with the appropriate State Historic Preservation Officer and in case of disagreement with the Department of the Interior as to whether a property is eligible for the National Register. The criteria of effect on historic properties found in 36 CFR Part 800 should be discussed with regard to each alternative. In the final EIS, there should be evidence of consultation, concerning the impacts of the proposed action on historic properties, with the appropriate State Historic Preservation Officer(s), and with State or local historical societies, museums, or academic institutions having special expertise. In the event that the FRA in consultation with the State Historic Preservation Officer finds that a proposed action will have an adverse effect on such property, there should also be evidence in the final EIS of subsequent consultation with the Advisory Council on Historic Preservation. A 4(f) determination may also be required in the EIS, as provided in section 12 of these Procedures.

(22) Construction impacts. The EIS should identify and assess the impacts associated with the construction period of each alternative, if any.

(o) A summary of unavoidable adverse impacts of the alternatives and a description of mitigation measures planned to minimize each adverse impact. Impacts and mitigation measures should be identified in this table as either long-term, short-term, or construction-period. If a proposed action will have an adverse effect on a property included in or eligible for inclusion in the National Register of Historic Places, this part of the final EIS shall include a copy of any Memorandum of Agreement with, or other response to comments by, the Advisory Council on Historic Preservation, in accordance with 36 CFR Part 800. This part of the EIS should also include a summary of any irreversible or irretrievable commitments of resources and any foreclosures of future options that would be likely to result from the alternatives.

(p) A brief discussion of the relationship between local short-term uses of the environment affected by the alternatives, and the maintenance and enhancement of long-term productivity in that environment.

(q) Any 4(f) determination covering the same proposed action as the EIS.

(r) A compilation of all applicable Federal, State and local permits, licenses, and approvals which are required before the proposed action may commence. The final EIS should reflect that there has been compliance with the requirements of all applicable environmental laws and orders. If such compliance is not possible by the time of final EIS preparation, the EIS should reflect consultation with the appropriate agencies and provide reasonable assurance that the requirements can be met.

(s) In a final EIS, a compilation of all responsible comments received on the draft EIS, whether made in writing or at a public hearing, and responses to each comment. Comments may be collected and summarized except for comments by Federal agencies and where otherwise required by Federal law or regulation. Every effort should be made to resolve significant issues before the EIS is put into final form. The final EIS should reflect such issues, consultation and efforts to resolve such issues, including an explanation of why any remaining issues have not been resolved.

(t) An index, if possible and useful.

(u) Signature and date indicating the approval of the Administrator as required by section 13(c) of these Procedures.

15. Record of Decision

(a) General. The Program Office shall prepare a draft record of decision at the point in which the FRA is prepared to make a final decision on the proposed action. The timing of the agency's decision shall follow the requirements of CEQ 1506.10. The record of decision shall follow the same approval process as the final EIS, as described in section 13(c)(12) through (16) of these Procedures.

(b) Contents. The draft record of decision shall include a description of the proposed action and the environmental information specified in CEQ 1505.2 as well as proposed findings pursuant to section 4(f), the DOT Wetlands Order (DOT 5660.1A), and the DOT Floodplains Order (DOT 5650.2), as appropriate.

(c) Changes. If the Administrator, or his or her designee, wishes to take an action which was not identified as the preferred action in the final EIS, or proposes to make substantial changes in the mitigation measures or findings discussed in the draft record of decision, the revised record of decision shall be processed internally in the same manner as EIS approval, in accordance with section 13(c) of these Procedures.

16. Effective Date

These Procedures were effective as of July 30, 1979 and apply to all FRA actions undertaken after that date.

Dated: May 18, 1999.

Jolene M. Molitoris,

Administrator.

[FR Doc. 99–13262 Filed 5–25–99; 8:45 am]

BILLING CODE 4910–62–U

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of Applicants for Exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous materials Safety has received the applications described herein. Each mode of transportation for which a particular exemption is requested is

indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before June 25, 1999.

ADDRESS COMMENTS TO: Records Center, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590. Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption application number.

FOR FURTHER INFORMATION: Copies of the applications (See Docket Number) are available for inspection at the New Docket Management Facility PL–401, at the U.S. Department of Transportation, Nassif Building, 400 7th Street, SW, Washington, DC 20590.

This notice of receipt of applications for new exemptions is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on May 20, 1999.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials Exemptions and Approvals.

NEW EXEMPTIONS

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of exemption thereof
12250–N	RSPA–1999–5793	New Mexico State Highway & Transportation Hwy., Santa Fe, NM.	49 CFR 173.415	To authorize the transportation in commerce of a Type A packaging, Class 7 without required documentation of tests and engineering evaluation on file showing the construction methods, packaging design, and materials of construction. (mode 1)
12251–N	RSPA–1999–5494	Four Seasons Environmental, Greensboro, NC.	49 CFR 180.405	To authorize the transportation in commerce of flammable liquids, n.o.s., Class 3, in non-DOT specification cargo tanks. (mode 1)
12258–N	RSPA–1999–5602	JL Shepherd & Associates, San Fernando, CA.	49 CFR 171.18, 171.19, 171.20.	To authorize the transportation in commerce of a specically designed device containing Radioactive material, Class 7. (mode 1)
12259–N	RSPA–1999–5601	GlaxoWellcome Research, Triangle Park, NC.	49 CFR 173.196	To authorize the transportation in commerce of etiologic agents (infectious substances) in alternative packagings. (mode 1)
12260–N	RSPA–1999–5600	Dodson International Air, Douglasville, GA.	49 CFR 172.101(9b), 172.204(c), 173.27(b)(2) & (3), 175.30(a)(1).	To authorize the transportation in commerce of certain Division 1.1, 1.2, 1.3 and 1.4 explosives which are forbidden or exceed quantities authorized for transportation. (mode 4)
12261–N	RSPA–1999–5599	Medical Equipment & Maintenance Co., Rockville, MD.	49 CFR 173.196	To authorize the transportation in commerce of an alternative secondary packaging for use in transporting infectious substances (etiologic agents). (mode 1)
12263–N	RSPA–1999–5597	Orbital Sciences Corp., Dulles, VA.	49 CFR 172, Subparts C, D, E, F & G.	To authorize the transportation in commerce of a specially designed device containing various hazardous materials to be transported as essentially unregulated. (mode 4)
12266–N	RSPA–1999–5636	Toyota Motor Sales, U.S.A., Torrance, CA.	49 CFR 172.301(c), 173.4(a)(4) and (a)(10).	To authorize the transportation in commerce of small quantities of flammable liquids, Class 3, in non-refillable containers enclosed in sealed polyethylene bags with overpacks. (mode 1)
12268–N	RSPA–1999–5638	Nalco Chemical Co., Naperville, IL.	49 CFR 173.202, 173.203	To authorize the transportation in commerce of empty non-DOT specification packaging containing residual of certain Class 8 materials. (mode 1)
12269–N	RSPA–1999–5639	Solutia Inc., St. Louis, MO.	49 CFR 173.31(f)	To authorize continued use of DOT 111A100W tanks for in-plant storage inventory of hazardous substances designed as Environmentally Sensitive Chemicals without required head protection and metal jacket. (mode 2)
12274–N	RSPA–1999–5707	Snow Peak USA, Inc., Lake Oswego, OR.	49 CFR 173.304(d)(3)(ii), 178.33.	To authorize the transportation of Liquefied petroleum gas in non-refillable, non-DOT specification inside containers conforming to the DOT Specification 2P except for size, testing requirements, marking and maximum charging pressure. (modes 1, 2, 3, 4)

[FR Doc. 99–13247 Filed 5–25–99; 8:45 am]
BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Applications for Modification of Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for modification of exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. this notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Request for modifications of exemptions (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix ''M'' denote a modification request. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comments must be received on or before (15 days after publication).

ADDRESS COMMENTS TO: Records Center, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, Nassif Building, 400 7th Street SW, Washington, DC.

Application No.	Docket No.	Applicant	Modification of exemption
8723–M		Dyno Nobel, Inc., Salt Lake City, UT[1]	8723
10821–M		BFI Waste Systems of North America, Inc., Atlanta, GA[2]	10821
10826–M		BFI Waste Systems of North America, Inc., Atlanta, GA[3]	10826
10832–M		Autoliv ASP, Inc., Ogden, UT[4]	10832
10874–M		BFI Waste Systems of North America, Inc., Atlanta, GA[5]	10874
11248–M		HAZMATPAC, Houston, TX[6]	11248
11380–M		Baker Atlas, Houston, TX[7]	11380
11447–M		SAES Pure Gas, Inc., San Luis Obispo, CA[8]	11447
11485–M		Zeneca, Inc., Wilmington DE[9]	11485
11537–M		Los Angeles Chemical Company, South Gate, CA[10]	11537
11537–M		Hasa, Inc., Santa Clarita, CA[11]	11537
11537–M		Hawkins Chemical, Inc., Minneapolis, MN[12]	11537
11769–M		Great Western Chemical Company, Portland, OR[13]	11769
11881–M	RSPA–1997–2132	Wampum Hardware Company, New Galilee, PA[14]	11881
11903–M	RSPA–1997–2604	Comptank Corporation, Bothwell, Ontario, CA[15]	11903
11986–M	RSPA–1998–3171	Department of Defense (MTMC), Falls Church, VA[16]	11986
12063–M	RSPA–1998–3827	The Hydrocarbon Flow Specialist, Morgan City, LA[17]	12063
12074–M	RSPA–1998–3841	Van Hool NV, B–2500 Lier Koningshooikt, BE[18]	12074
12118–M	RSPA–1998–4210	Taylor-Wharton Gas Equipment, Theodore, AL[19]	12118
12143–M	RSPA–1998–4477	Suburban Propane, Anchorage, AK[20]	12143
12232–M	RSPA–1999–5204	Bell Helicopter, Hurst, TX[21]	12232
12255–M	RSPA–1999–5579	TI/Martin JAVELIN Joint Venture, Lewisville, TX[22]	12255

[1] To modify the exemption to allow for an additional design for the emulsion tote bin for bulk shipments of certain Division 1.5 explosives and/or Division 5.1 oxidizers.

[2] To modify the exemption to relieve the marking requirements of inner packages, inside roll off containers, when transporting regulated medical waste from a single offeror.

[3] To modify the exemption to eliminate the quantity requirement for puncture-resistant sharps containers and film thickness of plastic bags as inner containers for use in transporting regulated medical waste.

[4] To modify the exemption to provide for additional facilities and Class 9 material.

[5] To modify the exemption to eliminate the quantity requirement for puncture-resistant sharps containers and film thickness of plastic bags as inner containers for use in transporting regulated medical waste.

[6] To modify the exemption to allow for passenger-carrying aircraft as an additional mode of transportation for the transportation of certain hazardous materials in specially designed combination type packagings without required labelling and placarding in limited quantities.

[7] To modify the exemption to allow for design changes of the non-DOT specification cylinder for the transportation of certain compressed hydrocarbon gases.

[8] To modify the exemption to allow for regulatory changes to the design, fabrication and marking of the pressure vessel as set forth in the requisite design code in the country of final destination for the transportation of certain Division 4.2 hazardous materials.

[9] To modify the exemption to provide for Division 4.3 as an additional class of material for tank cars authorized to remain standing with unloading connections attached when no product is being transferred, provided that a minimal level of monitoring is maintained.

[10] To modify the exemption to authorize Class 3 hazardous materials and those hazardous materials currently authorized to be shipped in UN31H2 IBCs that are securely mounted to a flatbed trailer, but not removed from the vehicle prior to loading or unloading of the container.

[11] To modify the exemption to increase packaging capacities not exceeding 610 gallons for the transportation of certain Class 8 materials in IBCs that are securely mounted to a flatbed trailer, but not removed from the vehicle prior to loading or unloading of the container.

[12] To modify the exemption to provide for additional Class 8 materials in IBCs that are securely mounted to a flatbed trailer, but not removed from the vehicle prior to loading or unloading of the container.

[13] To modify the exemption to provide for Division 5.1 as an additional class of material and allow for UN-marked compatible IBCs having capacities not exceeding 550 gallons without removing the IBC from the vehicle on which it is transported.

[14] To modify the exemption to provide for passengers and their respective vehicles to be permitted on the vessel during the transport of explosives for quarry operations.

[15] To modify the exemption to allow for the manufacture, marking and sale of various size non-DOT specification cargo tanks from 600 gallon to 6,150 gallon vessels manufactured from glass fiber reinforced plastics for use in transporting various Division 6.1, Class 3, 8 or 9 hazardous materials.
[16] To modify the exemption to allow for ventilation of cargo holds during maintenance operations.
[17] To modify the exemption to provide for additional Class 8 hazardous materials in IM 101 tanks equipped with an external bottom discharge valve.
[18] To modify the exemption to allow for minor editorial drawing changes/addition of Code Cases 2261 and 2265 for the manufacture, mark and sale of DOT Specification steel portable tanks designed, constructed and stamped in accordance with Division 2 of Section VIII of the ASME B*P*V Code for the transport of Division 2.1 and 2.2 materials.
[19] To modify the exemption to add/update drawings to match manufacturing fabrication, assembly sequences and procedures for the manufacture, marking, sale and use of DOT Specification 4L welded insulated cylinders and assemblies mounted to a handling skid for transporting Division 2.2 material; approval to utilize an additional steel handling skid.
[20] To reissue the exemption originally issued on an emergency basis authorizing the transportation of propane that exceeds the quantity limitations per package, when offered for transportation by air.
[21] To reissue the exemption originally issued on an emergency basis for the transportation in commerce of a Division 1.3 explosive device installed in an aircraft/helicopter wing with relief from marking, labeling and packaging requirements.
[22] To reissue the exemption originally issued on an emergency basis for transportation in a non-DOT specification cylinder of a limited quantity compressed gas without shipping papers, marking, and labeling.

This notice of receipt of applications for modification of exemptions is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on May 20, 1999.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials Exemptions and Approvals.

[FR Doc. 99–13248 Filed 5–25–99; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33742]

Dakota, Missouri Valley & Western Railroad, Inc.—Lease and Operation Exemption—Canadian Pacific Railway

Dakota, Missouri Valley & Western Railroad, Inc., a Class III rail carrier, has filed a notice of exemption under 49 CFR 1150.41 to lease and operate approximately 58.41 miles of rail line from Canadian Pacific Railway between milepost 264.37, at Oakes, and milepost 205.96, at Hankinson, in Dickey, Sargent and Richland Counties, ND.

The transaction is scheduled to be consummated on or after the May 19, 1999 effective date of the exemption.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke does not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33742, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Kevin M. Sheys, Esq., Oppenheimer Wolff Donnelly & Bayh, LLP, 1350 Eye Street, N.W., Suite 200, Washington, DC 20005–3324.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: May 19, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–13226 Filed 5–25–99; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–364 (Sub–No. 4X)]

Mid-Michigan Railroad, Inc.—Abandonment Exemption—in Kent and Ionia Counties, MI

Mid-Michigan Railroad, Inc. (MMRR) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a 5-mile line of its railroad between milepost 105.5, near Lowell, and milepost 110.5, at Elmdale, in Kent and Ionia Counties, MI. The line traverses United States Postal Service Zip Codes 49331 and 49302.

MMRR has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there has been no local or overhead traffic on the line during the past 2 years; (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 June 25, 1999, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by June 7, 1999. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by June 15, 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: Karl Morel, Ball Janik LLP, 1455 F St., N.W., Suite 225, Washington, DC 20005.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

MMRR has filed an environmental report which addresses the effects, if any, of the abandonment on the

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $1000. See 49 CFR 1002.2(f)(25).

environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by May 28, 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), MMRR shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned its line. If consummation has not been effected by MMRR's filing of a notice of consummation by May 26, 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: May 19, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–13225 Filed 5–25–99; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 99–27

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 99–27, Uniform Closing Agreement—Modified Endowment Contracts.

DATES: Written comments should be received on or before July 26, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the revenue procedure should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Uniform Closing Agreement—Modified Endowment Contracts.

OMB Number: 1545–1652.

Revenue Procedure Number: Revenue Procedure 99–27.

Abstract: This revenue procedure provides the procedures under which insurance companies may cure inadvertent nonegregious overfunding errors that cause life insurance contracts to become modified endowment contracts under Internal Revenue Code section 7702A. To obtain relief, a life insurance company must file a ruling request, together with an executed closing agreement that is substantially the same as the model agreement provided in the revenue procedure. The revenue procedure is effective as of May 18, 1999, but is limited to relief requests received on or before May 31, 2001.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 200.

Estimated Time per Respondent: 100 hours.

Estimated Total Annual Burden Hours: 20,000 hours.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 19, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–13252 Filed 5–25–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 2678

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 2678, Employer Appointment of Agent.

DATES: Written comments should be received on or before July 26, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW, Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Employer Appointment of Agent.

OMB Number: 1545–0748.

Form Number: 2678.

Abstract: Internal Revenue Code section 3504 authorizes a fiduciary, agent or other person to perform acts of an employer for purposes of employment taxes. Form 2678 is used to empower an agent with the responsibility and liability of collecting and paying the employment taxes including backup withholding and filing the appropriate tax return.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, not-for-profit institutions, farms and the Federal Government.

Estimated Number of Respondents: 95,200.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 47,600.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 14, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–13253 Filed 5–25–99; 8:45 am]

BILLING CODE 4830–01–U

Federal Register

Wednesday
May 26, 1999

Part II

Environmental Protection Agency

40 CFR Parts 72 and 75

Acid Rain Program; Continuous Emission Monitoring Rule Revisions; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 72 and 75

[FRL–6320–8]

RIN 2060–AG46

Acid Rain Program; Continuous Emission Monitoring Rule Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Title IV of the Clean Air Act (CAA or the Act), as amended by the Clean Air Act Amendments of 1990, authorizes the Environmental Protection Agency (EPA or Agency) to establish the Acid Rain Program. The Acid Rain Program and the provisions in this final rule benefit the environment by ensuring that the sulfur dioxide (SO_2), nitrogen oxides (NO_X) and carbon dioxide (CO_2) air pollution emissions to be measured and tracked pursuant to the provisions of 40 CFR part 75 are accurately monitored and reported. These provisions also benefit the regulated entities by providing additional flexibility and improved cost effectiveness to the monitoring and reporting options available to part 75 subject sources. On January 11, 1993, the Agency promulgated final rules, including the final continuous emission monitoring (CEM) rule, under title IV. On May 17, 1995 and November 20, 1996, the Agency revised the CEM rule to make the implementation simpler. On May 21, 1998, the Agency proposed additional revisions to the CEM rule, to make implementation easier and more efficient for both EPA and the facilities affected by the rule, to improve quality assurance requirements, and to create new alternative monitoring options. EPA promulgated final rule revisions addressing some of these additional proposed revisions, based on comments received, when EPA promulgated a Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone (NO_X SIP call).

In this action, EPA is issuing final rule revisions addressing the remaining May 21, 1998 proposed revisions to the CEM rule, with certain changes to the proposal based on the public comments received. Some of these revisions will be relevant for sources that become subject to part 75 requirements in response to the NO_X SIP call.

DATES: The effective date of this rule is June 25, 1999. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 25, 1999.

ADDRESSES: *Docket.* Supporting information used in developing the regulations is contained in Docket No. A–97–35. This docket is available for public inspection and photocopying between 8:00 a.m. and 5:30 p.m. Monday through Friday, excluding government holidays and is located at: EPA Air Docket (MC 6102) , Room M–1500, Waterside Mall, 401 M Street, SW, Washington, DC 20460. A reasonable fee may be charged for photocopying.

FOR FURTHER INFORMATION CONTACT: Monika Chandra, Acid Rain Division (6204J), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, (202) 564–9781.

SUPPLEMENTARY INFORMATION: The contents of the preamble are listed in the following outline:

I. Regulated Entities

Entities regulated by this action are fossil fuel-fired boilers and turbines that serve generators producing electricity, generate steam, or cogenerate electricity and steam. While part 75 primarily regulates the electric utility industry, the recent promulgation of 40 CFR part 96 and certain revisions to part 75 (see 63 FR 57356, October 27, 1998) means that part 75 could potentially affect other industries. The recent adoption of part 96, together with revisions to part 75, include nitrogen oxides (NO_X) mass provisions for the purpose of serving as a model which could be adopted by a state, tribal, or federal NO_X mass reduction program covering the electric utility and other industries. Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Electric service providers, boilers, turbines and other process sources where emissions exhaust through a stack.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities which EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility, company, business, organization, etc., is regulated by this action, you should carefully examine the applicability provisions in §§ 72.6, 72.7, 72.8, and part 96 of title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section of this preamble.

II. Background and Summary of Final Rule

Title IV of the Act requires EPA to establish an Acid Rain Program to reduce the adverse effects of acidic deposition. On January 11, 1993, the

Agency promulgated final rules implementing the program, including the CEM rule (58 FR 3590). Notices of direct final rulemaking and of interim final rulemaking further amending the regulations were published on May 17, 1995 (60 FR 26510 and 60 FR 26560). Subsequently, on November 20, 1996, a final rule was published in response to public comments received on the direct final and interim rules (61 FR 59142). On May 21, 1998, the Agency published proposed revisions to the part 75 CEM regulations (62 FR 28032). As noted above, EPA recently promulgated final revisions to part 75 addressing some of the May 21, 1998, proposed revisions in conjunction with the promulgation of a Model NO_X Trading Rule in part 96 and the NO_X SIP call (see 63 FR 57356).

Today's action adopts final part 75 revisions to address the remaining May 21, 1998, proposed revisions and to make minor technical corrections to the part 75 provisions promulgated in conjunction with part 96 and the NO_X SIP Call. The final revisions involve the following matters: (1) revised definitions of gas-fired, oil-fired, and peaking unit to allow for changes in unit fuel usage and/or operation; (2) a minor wording correction to the applicability provisions in part 72; (3) new quality assurance/quality control (QA/QC) requirements for quantifying stack gas moisture content; (4) clarifying changes to the certification and recertification process; (5) substitute data requirements for carbon dioxide (CO_2), heat input and moisture; (6) clarifying revisions to the petition provisions for alternatives to part 75 requirements; (7) clarifying changes to span and range requirements; (8) clarifying revisions to general QA/QC requirements; (9) calibration error test requirements; (10) linearity test requirements; (11) a new flow-to-load QA test for flow monitors; (12) reductions in and/or clarifications to the relative accuracy test audit (RATA) and bias test requirements; (13) clarifying revisions to the procedures for CEM data validation; (14) clarifying revisions to the sulfur dioxide (SO_2) emissions data protocol for gas-fired and oil-fired units (Appendix D); (15) determination of CO_2 emissions under Appendix G; (16) recordkeeping and reporting changes to reflect the proposed revisions; (17) a revised traceability protocol for calibration gases (Appendix H); and (18) NO_X mass emission recordkeeping and reporting provisions, and minor revisions to NO_X mass monitoring requirements.

Many of these changes are minor technical revisions based on comments received from facilities following the initial implementation of part 75. Based on experience gained in the early years of the program, facilities have developed a number of suggestions that will simplify and streamline the monitoring process without sacrificing data quality. The Agency has also amended quality assurance requirements based on gaps identified by EPA during evaluation of the initial implementation of part 75. Finally, several minor technical changes have been made in order to maintain uniformity within the rule itself and to clarify various provisions.

III. Summary of Major Comments and Responses

A. Certification/Recertification Procedural Changes

Background: EPA proposed to revise the recertification application review period in § 75.20(b)(5) from 60 days to 120 days, which is the same review period as for the initial certification application. The Agency believes that this will reduce confusion, simplify certification/recertification application tracking, and will result in the more efficient allocation of resources by local, state, and federal agencies. Therefore, EPA has adopted this change in the final rule with certain modifications in response to issues raised by commenters.

Discussion: Two states responded positively to the proposed change. One state commented that the increased review time ''will allow more effective use of staff resources and provide ample time for a thorough review of the data submitted in the application'' (see Docket A–97–35, Item IV–D–6). Another state commenter remarked that extending the review period ''adds uniformity and consistency to the certification and recertification process. This change is positive, and it allows the state agencies the time to resolve minor deficiencies which may otherwise serve as grounds to recommend disapproval. Based on experience, the 120 day period is absolutely essential for the review of certification/recertification applications'' (see Docket A–97–35, Item IV–D–9).

Several commenters suggested that if EPA disapproved a recertification application after the 120 day period, data recorded during the entire 120 day period would become invalid and the use of substitute data would be required (see Docket A–97–35, Items IV–D–17, IV–D–20 and IV–D–24). However, as EPA stated in the preamble to the proposal, ''less than 2 percent of all monitoring system applications submitted between 1992 and September 1997 were disapproved'' (63 FR 28045, citing Docket A–97–35, Item II–A–4). As experience with the program increases, the number of disapprovals is expected to decrease even further. In addition, EPA's position is that the owners or operators of affected facilities are responsible for initiating, conducting, evaluating and certifying the results of the required testing prior to submission to the appropriate regulatory Agencies. The Agencies' role is to ''certify'' or verify the results. Thus, there is no reason to expect that the additional time provided to meet the administrative needs of the program will result in any significant compliance risk to the regulated sources, except in instances where insufficient care is taken to ensure proper conduct of the testing.

Two commenters stated that the owner or operator would be in violation of the requirements of proposed § 75.33(d) and § 75.10(a) if a recertification application were disapproved after 120 days (see Docket A–97–35, Items IV–D17 and IV–D–23) because the percent monitor availability would be below 80%. These proposed penalties have been withdrawn from the final rule in response to comments received. Today's final rule does not treat a percent monitor data availability of less than 80% as a violation. Instead, the final rule provides that if percent monitor data availability is less than 80%, then the appropriate maximum value (e.g., maximum potential concentration) or, in some cases, the appropriate minimum potential value will be used to provide substitute data (see Section C of this preamble for a further discussion of these provisions).

Several commenters suggested that since the review of the initial certification applications for the Acid Rain Phase I and Phase II units has been completed, the burden on the states and EPA has been removed . Therefore, it should not take EPA 120 days to review recertification applications (see Docket A–97–35, Items IV–D–14, IV–D–20, and IV–D–24). This argument would be more compelling if the Acid Rain Program were the only program that the various regulatory agencies are required to implement. However, EPA and the States are currently responsible for implementing several other programs that require comprehensive administrative review of various types of applications and petitions (e.g., Compliance Assurance Monitoring (CAM), the OTC NO_X Budget Program, the PSD program and Title V permitting). EPA also anticipates that the NO_X SIP call will further increase the number of certification and recertification applications and

petitions that need to be reviewed by the regulatory agencies.

Many recertifications require the same tests as for initial certification. Therefore, recertification applications often take as much effort to review as certification applications. It is also sometimes difficult to distinguish a recertification application package from an initial certification application package, which can complicate tracking the two types of applications if they have different review periods. The recertification process usually requires that a state or local program perform the initial review and forward the results to the EPA regional office which will then make a recommendation to EPA headquarters on whether to approve or disapprove the application. This requires a significant amount of time and does not allow much time to coordinate with the source to get additional information, when needed. There is more likelihood of a disapproval being issued under a short time frame. Finally, EPA notes that it does not have control over the number of recertification applications that are submitted. Individual utility choices, changes in rules, market conditions, and technology all influence the number of recertifications. Therefore, EPA has concluded that extending the application review period from 60 to 120 days is both necessary and appropriate.

B. Quality Assurance Requirements for Quantifying Stack Gas Moisture Content

Background: Section 75.11(b) of the January 11, 1993 Acid Rain rule requires the owner or operator to continuously (or on an hourly basis) account for the moisture content of the stack gas when SO_2 concentration is measured on a dry basis. The moisture content is needed to correct the measured hourly stack gas volumetric flow rates to a dry basis when calculating SO_2 mass emission rates in lb/hr. Section 75.13(a) of the rule, as amended on May 17, 1995, contains provisions for CO_2 monitoring paralleling the provisions of § 75.11(b); that is, when CO_2 concentration is measured on a dry basis, a correction for stack gas moisture content is needed to accurately determine the CO_2 mass emissions. The stack gas moisture content is also needed when a dry-basis O_2 monitor is used to account for CO_2 emissions and, in some instances, when accounting for unit heat input or when determining NO_X emission rate in lb/mmBtu.

As presently codified, part 75 does not specify any quality assurance requirements for moisture measurement devices. Approximately 5 to 10 percent of the continuous emission monitors in the Acid Rain Program require moisture corrections to accurately measure SO_2, CO_2, or NO_X emissions or heat input (see Docket A–97–35, Item II–I–6). The accuracy of the stack gas moisture measurements directly affects the accuracy of the reported SO_2 mass emission rates, CO_2 mass emission rates, NO_X emission rates and heat input values. An error of 1.0 percent H_2O in measured moisture content causes a 1.0 percent error in the reported emission rate or heat input value. Failure to quality assure the moisture data can therefore result in significant under-reporting of SO_2, CO_2, and NO_X emissions and heat input.

In the May 21, 1998 proposed rule, EPA set forth quality assurance procedures that would apply to moisture monitoring systems because the Agency believes that when moisture corrections must be applied, continuous, quality assured, direct measurement of the stack gas moisture content or continuous measurement of surrogate parameters for moisture, such as wet-and dry-basis oxygen concentrations, is the best way to ensure the accuracy of the reported emission data. The proposed rule specified that a moisture monitoring system could consist of either: (1) a continuous moisture sensor; (2) an oxygen (O_2) analyzer (or analyzers) capable of measuring O_2 on both a wet basis and on a dry basis; or (3) a system consisting of a temperature sensor and a certified data acquisition and handling system (DAHS) component capable of determining moisture from a lookup table, i.e., a psychometric chart (this third option would apply only to saturated gas streams following wet scrubbers).

The proposed rule included requirements for the initial certification of moisture monitoring systems. For continuous moisture sensors, a 7-day calibration error test and a relative accuracy test audit (RATA) would be required. For moisture monitoring systems consisting of one or more wet-and dry-basis oxygen analyzers, the proposed requirements included a 7-day calibration error test, a linearity test and a cycle time test of each O_2 analyzer, and a RATA of the moisture measurement system. For the lookup table option (saturated streams, only), the certification requirement would consist of a DAHS verification. The proposed rule specified that owners or operators would have to complete all moisture monitoring system certification tests no later than January 1, 2000.

The proposed rule contained performance specifications for moisture monitoring systems. These specifications would apply to continuous moisture sensors and to wet-and dry-basis oxygen analyzers. For moisture monitoring systems consisting of wet-and dry-basis O_2 analyzers, the proposed span values and performance specifications for calibration error, linearity, and cycle time would be the same as the current specifications for O_2 monitors. For moisture sensors, a calibration error specification of 3.0% of span was proposed. The proposed relative accuracy (RA) specification for all moisture monitoring systems would be 10.0 percent. An alternative RA specification was also proposed, i.e., the RA test results would be considered acceptable if the mean difference of the reference method measurements and the moisture monitoring system measurements is within ± 1.0 percent H_2O.

On-going QA requirements for moisture monitoring systems were also proposed. Appendix B would be revised to require daily calibrations of moisture monitoring systems, quarterly linearity checks of wet-and dry-basis oxygen analyzer(s), and semiannual RATAs of moisture monitoring systems. Any moisture monitoring system achieving a relative accuracy of ≤7.5 percent or a mean difference between the CEMS and reference method values within ± 0.7 percent H_2O, would qualify for an annual, rather than semiannual RATA frequency.

Missing data procedures for moisture were included in the proposed rule in a new section, § 75.37. Provided that the moisture data availability is high (≥90.0 percent), the average of the ''hour before'' and ''hour after'' moisture values would be used for each hour of the missing data period. When the percent data availability drops below 90.0 percent, 0.0 percent moisture would be substituted for each hour of the missing data period.

Finally, the proposed rule specified that records must be kept for the moisture monitoring systems, including hourly average moisture readings, percent data availability, and records of all calibration error tests, linearity tests and relative accuracy test audits.

Today's final rule provides a number of options by which owners or operators of affected sources may account for the stack gas moisture content on an hourly basis. The rule also includes quality assurance provisions for moisture monitoring systems. Today's rule differs from the proposed rule as follows: (1) the alternate specification in terms of the mean difference has been increased

from ± 1.0 to ± 1.5% H_2O, but the principal relative accuracy specification for moisture monitoring systems has been promulgated as proposed, at 10.0 percent; (2) the daily calibration requirement for continuous moisture sensors has been withdrawn; (3) the use of the lookup table option has been expanded to include any demonstrably saturated gas stream, rather than limiting it to gas streams following wet scrubbers; (4) a site-specific coefficient or constant (''K'' factor), determined at the time of the RATA, may be used to calibrate the moisture monitoring system with respect to EPA Reference Method 4; and (5) in lieu of continuously monitoring the stack gas moisture content, a conservative, fuel-specific default moisture percentage may be reported for each unit operating hour (for coal and wood, only).

Discussion: Two state agencies agreed with EPA that there is a need for quality assurance of moisture monitoring systems (see Docket A–97–35, Items IV–D–06 and IV–D–09). A third state agency disagreed with the proposed QA/QC for the moisture monitors, contending that the proposed amendments provide no added benefit in terms of data quality (see Docket A–97–35, Item IV–D–11). That same state agency objected to quality assuring a ''sub-channel'' parameter such as moisture, claiming that it is inconsistent with the way EPA quality assures other combined monitoring systems (such as a NO_X-diluent system). The commenter expressed confidence that existing daily, quarterly, semiannual and annual QA/QC on the gas and flow rate monitors is sufficient to ensure data quality, and that if the CEMS moisture value is significantly in error, RATA limits would probably not be met. EPA notes, however, that the commenter provided no data to demonstrate that this is true. The Agency also does not agree with the commenter's characterization of moisture as a ''sub-channel'' parameter. The attempt to draw an analogy between moisture monitoring and the NO_X-diluent monitoring system is inappropriate. Under part 75, the moisture measurement system is a separate entity and should be quality-assured as such. The moisture monitor is not a component of any ''combined'' monitoring system. The only true combined monitoring systems under part 75 are the NO_X-diluent and SO_2-diluent monitoring systems, for which the relative accuracy is determined on a combined basis, in lb/mmBtu (i.e., the individual relative accuracies of the pollutant and diluent component monitors are not determined).

Several commenters indicated that they do not believe that a moisture monitoring system can meet the proposed relative accuracy (RA) specifications of 10.0% for a semiannual RATA frequency or 7.5% for an annual RATA frequency. One commenter expressed the opinion that the RA for a moisture monitoring system should be 15.0% (see Docket A–97–35, Item IV–G–04). Another commenter suggested that the principal RA specification should be 10% <RA ≤15% for a semiannual RATA frequency and RA ≤10% for an annual RATA frequency, and that the alternate RA specification, in terms of the mean difference, should be ± 2.0% H_2O for a semiannual frequency and ± 1.5% for an annual RATA frequency (see Docket A–97–35, Item IV–D–23). Another commenter noted that even slight drift in measurements can result in significant errors in the moisture measurements (see Docket A–97–35, Item IV–D–20). One commenter requested that EPA consider the following alternatives to the proposed QA/QC requirements for moisture monitors: (1) eliminate the moisture RA requirement; (2) for wet and dry oxygen analyzers, allow relative accuracy testing of the oxygen analyzer(s) rather than requiring a RATA of the moisture system; (3) allow the use of a default value for moisture, in lieu of monitoring moisture continuously; or (4) subtract the absolute value of the average moisture values generated by the moisture monitoring system from the average reference method value at the time of a RATA and use the difference to correct all subsequent moisture data until the next RATA (see Docket A–97–35, Item IV–D–02).

Only one set of data was submitted by the commenters for a moisture monitoring system RATA. The data set indicated that the moisture monitoring system, which consisted of wet and dry-basis oxygen analyzers, could achieve an RA of 16.5% (see Docket A–97–35, Item, IV–D–02). Note, however, that when the moisture monitoring system data and the reference method data were compared, the moisture monitoring system consistently indicated a moisture value that was approximately 3% H_2O higher than the reference method, with a confidence coefficient of 0.507. The low confidence coefficient indicates that the moisture monitoring system readings were consistently biased high with respect to the reference method. Therefore, it appears that a suitable coefficient or constant (''K'' factor) could be applied to the moisture system readings, to make the moisture monitoring system readings agree with the reference method. In this case, subtracting 3% moisture from the average moisture monitoring system values for each run caused the relative accuracy to drop from 16.5% to 2.4%, which is well below the proposed 10.0% semiannual and 7.5% annual RA specifications. For the alternate RA specification, after applying the 3% moisture correction, the mean difference was essentially zero, which is also well below the value of 1.0% moisture proposed for a semiannual RATA frequency and the value of 0.7% moisture proposed for an annual RATA frequency. This ''K'' factor approach, which was suggested by one of the commenters, has a precedent in the Acid Rain Program. Nearly all flow monitors must be calibrated to match the EPA reference method (i.e., Method 2), by using either a constant or a polynomial equation with multiple coefficients. Section 6.5.7 of Appendix A of today's rule allows such ''K'' factors to be developed for moisture monitoring systems. The ''K'' value, which would be established at the time of the semiannual or annual RATA, would be programmed into the DAHS and applied to the subsequent moisture data. Sections 75.56 (a)(5)(ix) and 75.59 (a)(5)(vii) of today's rule require the owner or operator to keep records on-site, indicating the current value of the coefficient or ''K'' factor and the date on which it began to be used. The rule further requires a RATA of the moisture monitoring system whenever the coefficient or ''K'' factor is changed.

Relative accuracy specifications of 10.0% (for semiannual RATA frequency) and 7.5% (for annual RATA frequency) for moisture monitoring systems have been promulgated in today's rule, as proposed. The alternate RA specifications of ± 1.0% H_2O (for semiannual RATA frequency) and ± 0.7% H_2O (for annual RATA frequency) have been increased, respectively, to ± 1.5% H_2O and ±1.0% H_2O. In view of EPA's decision to allow the use of site-specific ''K'' factors for moisture monitoring systems, the Agency believes that affected utilities will be able to meet these RA specifications.

The proposed rule set forth a missing data procedure for moisture monitoring systems. Two commenters expressed concern regarding the establishment of such a ''conservative'' missing data procedure (see Docket A–97–35, Items IV–D–11 and IV–D–20). One of these commenters further stated that there are insufficient data to know what availability can reasonably be expected from moisture monitoring systems,

especially in view of the proposed moisture QA/QC specifications. After careful consideration, the Agency agrees with the commenter and, in response, the final rule adopts the missing data procedures in § 75.37 that are less conservative than the procedures in the proposed rule and that more closely resemble the standard missing data procedures for SO_2, NO_X, and flow, as recommended by the commenters. The moisture missing data algorithm is modeled after the standard SO_2 missing data algorithm in § 75.33(b). This is consistent with the provisions in §§ 75.35 and 75.36 of today's rule, which adopt this algorithm for CO_2 and heat input missing data. However, in finalizing the moisture missing data provisions, it became evident that a single mathematical algorithm is not adequate to cover all of the part 75 emission rate and heat input equations that require moisture corrections. In most of the equations, the lower moisture values are more conservative, and an ''inverted'' SO_2 missing data algorithm is appropriate (for further discussion of the ''inverted'' algorithm, see section C of this preamble, below). However, there are certain emission rate equations for which the opposite is true (i.e., the higher moisture values are more conservative and the regular SO_2 missing data algorithm is appropriate). The specific equations for which the regular SO_2 algorithm applies are Equations F–3, F–4 and F–8 in Method 19 in Appendix A of 40 CFR 60. Provided that all of the moisture-corrected emission and heat input equations used by an affected facility employ the same moisture missing data algorithm (regular or inverted), it is a simple matter to substitute for missing moisture data. However, when two or more equations require different moisture algorithms, an alternative way of addressing missing moisture data is needed. EPA believes that this situation will rarely be encountered (at present, the Agency's records indicate that there are only two such affected units in the Acid Rain Program). Therefore, § 75.37(d) of today's rule requires the owner or operator of such units to petition the Administrator under § 75.66(l), for an alternative moisture missing data procedure.

Finally, several commenters requested that EPA allow the use of a default moisture value in lieu of the required moisture monitoring (see Docket A–97–35, Items IV–D–11, IV–D–02 and IV–D–23). The Agency has performed a moisture data analysis for various fuels (see Docket A–97–35, Item IV–A–2) and, based on the results, has provided fuel-specific default values for moisture in today's rule (for coal and wood, only), which may be reported for each unit operating hour, as an alternative to operating and maintaining a continuous moisture monitoring system. The default values are found in §§ 75.11(b)(1) and 75.12(b) of today's rule. Note that two sets of default values appear in the rule to address the variability in format among the equations used for determining pollutant emissions and heat input (as discussed in the previous paragraph). The lower default values in § 75.11(b)(1) apply to Equations F–2, F–14b, F–16, F–17 and F–18 in Appendix F of part 75 and to Equations 19–5 and 19–9 in EPA Method 19 in Appendix A of 40 CFR 60. The higher default values in § 75.12(b) apply when Equation 19–3, 19–4 or 19–8 in EPA Method 19 in Appendix A of 40 CFR 60 is used to determine the NO_X emission rate. The default values were determined as follows. The moisture percentage values (which included both ultimate moisture and free moisture) for each fuel type were taken from the appropriate tables in Docket Item IV–A–2, cited above. The moisture values were then ranked from the lowest percentage value to the highest percentage value, and the 10th percentile value was selected for the ''low'' default value and the 90th percentile value was selected for the ''high'' default value. Each default moisture percentage was rounded to the nearest whole number.

C. Percent Monitor Availability

Background: EPA proposed that if the annual monitor data availability dropped below 80% for SO_2, NO_X, flow rate or CO_2, this would violate the primary measurement requirement of § 75.10(a). In response to comments, today's final rule does not treat a percent monitor data availability of less than 80% as a violation. Instead, the final rule provides that if percent monitor data availability is less than 80%, then the appropriate maximum value (i.e., maximum potential concentration (MPC) for SO_2 and CO_2, maximum potential emission rate (MER) for NO_X and maximum potential flow rate for flow) will have to be used as substitute data for any hour for which valid data is not available. For O_2, the minimum potential concentration will be used to provide substitute data. For moisture, consistent with the discussion in section B of this preamble, the minimum potential moisture percentage will be used in most instances to provide substitute data; however, for certain emission rate equations, the maximum potential moisture percentage must be used.

Discussion: EPA received one comment that supported making a percent monitor availability of less than 80% a violation (see Docket A–97–35, Item IV–D–11) and another commenter favored the provision that if percent monitor availability is below 80% due to ''unforseen events beyond our control,'' this would be taken into consideration (see Docket A–97–35, Item IV–G–9). EPA also received comments objecting to making a percent monitor data availability of less than 80% a violation and suggesting that EPA should modify the standard missing data algorithms for SO_2, NO_X and flow rate to require the use of a maximum substitute data value when monitor availability drops below 80 percent (see Docket A–97–35, Items IV–D–17, IV–D–19, IV–D–23, IV–D–24). In response to the comments, the final rule does not make percent monitor availability of less than 80% a violation and instead provides that if percent monitor data availability at a source is less than 80%, then the owner or operator of the source will have to substitute the appropriate maximum value (i.e., MPC for SO_2 and CO_2, MER for NO_X emission rate and maximum potential flow rate for flow) as suggested by the commenters. Note that for O_2 and, in most cases, for moisture, minimum potential values will be substituted rather than maximum values, since the lower values of these parameters are more conservative. However, if Equation 19–3, 19–4 or 19–8 in EPA Method 19 in Appendix A of 40 CFR 60 is used to determine NO_X emission rate, higher moisture values are more conservative and the maximum potential moisture percentage will be used to provide substitute data.

The missing data approach set forth in today's rule to address low monitor data availability retains the basic design of the part 75 program and appropriately addresses the need for accountability from sources that are inadequately maintaining their monitoring systems. The Agency maintains that this provides a strong incentive to achieve at least 80% monitor availability. Unlike the proposed approach of considering sources to be in violation, the substitute data approach adopted today creates this incentive while rendering unnecessary the task of determining and evaluating the reason(s) for low monitor data availability.

D. Span and Range Requirements

Background: The span of a CEMS provides an estimate of the highest expected value for the parameter being

measured by the CEMS. For instance, the span value of an SO_2 monitor is an approximation of the highest SO_2 concentration likely to be recorded by the CEMS during operation of the affected unit. The range of a CEMS is the full-scale setting of the instrument. Under part 75, the range of a monitor must be equal to or greater than the span value. Section 2.1 of Appendix A further specifies that the range must be chosen such that the majority of the readings during normal operation fall between 25.0 and 75.0 percent of full-scale. The span value is important because the reference gas concentrations and signals used for daily calibration of the CEMS are expressed as percentages of the span value. The allowable daily calibration error for a CEMS is also expressed as a percentage of span.

Sections 2.1.1 through 2.1.4 of Appendix A of the January 11, 1993 rule specified procedures for determining the span values for SO_2, NO_X, diluent gas (O_2 or CO_2), and volumetric flow rate. For SO_2, the ''maximum potential concentration'' (MPC) was first calculated based on fuel sampling. The MPC values for NO_X were specified in the rule and were based on the type of fuel being combusted. The SO_2 and NO_X span values were then determined by multiplying the MPC by 1.25. For CO_2 and O_2, a span value of 20.0 percent CO_2 or O_2 was required for all diluent monitors. For flow rate, the ''maximum potential velocity'' (MPV) was first determined. Then, the span value was obtained by multiplying the MPV by 1.25 and rounding off the result.

In the January 11, 1993 rule, the SO_2 or NO_X monitor range derived from the MPC was referred to as the ''high-scale.'' The rule further specified that whenever the majority of the readings during normal operation were expected to be less than 25.0 percent of the high full-scale range value (e.g., if a scrubber is used to reduce SO_2 emissions), a second, ''low-scale'' span and range would be required. The low scale span value of the CEMS would be defined as 1.25 times the ''maximum expected concentration'' (MEC).

In the first two years of Acid Rain Program implementation, it became clear that the span and range provisions of part 75 lacked sufficient flexibility and clarity. The May 17, 1995 rule revisions attempted to address these deficiencies. Two alternative methods of determining the MPC or MEC were added, i.e., from historical CEMS data or from emission test results. For NO_X, a comprehensive list of MPC values was promulgated (Tables 2–1 and 2–2 in Appendix A), taking into consideration the unit type in addition to the fuel type. Flexibility was also added to the dual-range requirements for NO_X monitors. For flow rate, a more detailed procedure for determining the span value was added.

The May 17, 1995 rule also revised the procedures for adjusting the span and range of SO_2, NO_X, and flow monitors. The original rule had specified that span and range adjustments were required whenever the MPC, the MEC, or the MPV changed significantly (although a ''significant'' change was undefined). When a significant change in the MPC, MEC, or MPV occurred, a new range setting was to be established and a new span value defined, equal to 80.0 percent of the adjusted range value. The May 17, 1995 rule changed this procedure, requiring the new span value to be determined first, followed by the new range. The May 17, 1995 rule also added procedures for addressing full-scale exceedances, specifying that the full-scale value is to be reported for an exceedance of one hour and that a range adjustment is required for an exceedance greater than one hour.

After promulgation of the May 17, 1995 rule, EPA continued to receive questions and comments about the span and range sections of part 75. Apparently, the span and range sections of the rule were still not sufficiently clear, flexible, or detailed and were in need of further revision. Therefore, on May 21, 1998, further revisions to the span and range provisions were proposed.

The proposed rule provided an alternative procedure for determining the MPC of SO_2 or NO_X, requiring the MPC to be based upon a minimum of 720 quality assured monitor operating hours, rather than 30 unit operating days. A specific requirement to calculate the maximum potential NO_X emission rate (MER) was also proposed. The owner or operator could use the diluent cap value of 5.0 percent CO_2 or 14.0 percent O_2 for boilers (or 1.0 percent CO_2 or 19.0 percent O_2 for turbines) in the NO_X MER calculation.

The proposed rule provided a definition of the MPC for CO_2. The MPC would be 14.0 percent CO_2 for boilers and 6.0 percent CO_2 for combustion turbines. Alternatively, the MPC for CO_2 could be based on a minimum of 720 hours of representative quality assured historical CEM data. A standardized procedure for calculating the maximum potential flow rate (MPF) was proposed and a clear distinction between the ''calibration span value'' of a flow monitor (expressed in the units of measure used for the daily calibrations) and the ''flow rate span value'' (expressed in the units used for electronic data reporting) was provided.

The proposed rule set forth changes to the procedures for determining the maximum expected concentration (MEC) of SO_2 and NO_X, and to the criteria for determining whether dual span and range requirements apply. A separate MEC determination would be required for each type of fuel combusted, except for fuels that are only used for unit startup or for flame stabilization. To determine whether a second, low-scale span is required in addition to the high-scale span based on the MPC, each of the maximum expected concentration (MEC) values would be compared against the MPC. If any of the MEC values was <20.0 percent of the MPC, a low-scale span would be required.

The proposed rule provided additional flexibility in the method of calculating span values. The SO_2, NO_X or flow rate span value could be set anywhere between 1.00 and 1.25 times the applicable maximum value (i.e., the MPC, MEC or MPF). For CO_2 and O_2 monitors, the owner or operator would be given maximum flexibility in selecting an appropriate span value. For CO_2 monitors installed on boilers, any representative span value between 14.0 percent and 20.0 percent CO_2 would be acceptable. For combustion turbines, any representative CO_2 span value between 6.0 and 14.0 percent CO_2 could be used. For O_2 monitors, a span value between 15.0 percent and 25.0 percent O_2 could be selected and an alternative O_2 span value of less than 15.0 percent could be used, if supported by an acceptable technical justification.

The proposed rule expanded and clarified the guideline in section 2.1 of Appendix A for selecting an appropriate full-scale range. The full-scale range would be selected so that the readings during typical unit operation fall between 20.0 and 80.0 percent of full-scale, which represents a slight increase in flexibility from the 25 to 75 percent of full-scale guideline in the current rule. The proposal also cited three specific cases in which the guideline in section 2.1 is inapplicable: (1) during the combustion of very low sulfur fuels (≤0.05% sulfur by weight); (2) for SO_2 or NO_X readings on the high range for an affected unit with SO_2 or NO_X emission controls and two span values; and (3) when SO_2 or NO_X readings are less than 20.0 percent of the low measurement range for a dual-span unit with SO_2 or NO_X emission controls, provided that the low readings occur during periods of high control device efficiency.

The proposed rule specified that the following monitoring configurations could be used to meet dual span and range requirements: (1) a single analyzer with two ranges, or (2) two separate analyzers connected to a common probe and sample interface. The high and low ranges could be designated in the monitoring plan as two separate, primary monitoring systems, or as separate components of a single, primary monitoring system, or the ''normal'' range could be designated as a primary monitoring system, and the other range as a non-redundant backup monitoring system.

The proposed rule would allow the owner or operator to use a ''default high-range value'' in lieu of operating, maintaining, and quality assuring a high-scale monitor range. The default high-range value would be 200.0 percent of the MPC. This value would be reported whenever the SO_2 or NO_X concentration exceeded the full-scale of the low-range analyzer.

Finally, the proposed rule provided detailed guidelines and procedures for adjusting the span and range of the CEMS. First, if the maximum value upon which the high span value is based (i.e., the MPC or MPF) was exceeded during a calendar quarter, but the span was not exceeded, the span or range would not have to be adjusted. However, if any quality assured hourly concentration or flow rate exceeded the MPC or MPF by ≥5.0 percent during the quarter, a new MPC or MPF would have to be defined. Second, if any quality assured reading on the high measurement range exceeded the span value by ≥10.0 percent during the quarter but did not exceed the range, a new MPC or MPF (as applicable) would have to be defined, and the span value (and range, if necessary) would also have to be changed. Third, for full-scale exceedances of a high monitor range, corrective action would be required to adjust the span and range. A value of 200.0 percent of the current full-scale range would be reported to EPA for each hour of each full-scale exceedance.

Today's rule finalizes the proposed revisions to the span and range sections of Appendix A. Most of the provisions have been finalized as proposed, with only minor changes and clarifications. However, there are three notable exceptions: (1) the proposed requirement for mandatory quarterly evaluations of the MPC, MEC and MPF values and the associated prescriptive criteria for adjusting the spans and ranges have been withdrawn; (2) the proposed change in methodology for determining dual span and range requirements (i.e., comparing the MEC value(s) to the MPC) has been withdrawn; and (3) an additional monitoring configuration option has been provided for units with dual span requirements. For units with a dual-range SO_2 or NO_X analyzer, the final rule allows the low and high ranges to be represented as a single component of a primary SO_2 or NO_X monitoring system.

Discussion: EPA received supportive comments from a number of utilities, regarding several of the proposed span and range revisions (see Docket A–97–35, Items IV–D–20, IV–D–23, IV–D–24, IV–D–25, and IV–G–01). The commenters generally favored the increased flexibility in determining SO_2, NO_X, CO_2 and O_2 span values and supported the concept of a ''default high range value.'' One commenter, however, opposed the use of purified instrument air for O_2 monitor calibrations (see Docket A–97–35, Item IV–D–11) and, as discussed in greater detail below, two commenters who supported the ''default high range'' concept took issue with the proposed default value (see Docket A–97–35, Items IV–D–05 and IV–D–24). One commenter asked EPA to give guidance as to what type of technical justification would be required to use an alternative O_2 span value of less than 15 percent (see Docket A–97–35, Item IV–D–23). The final rule provides an example, in section 2.3.1 of Appendix A.

Several commenters stated that the proposed procedures for making span and range adjustments were particularly complicated and burdensome (see Docket A–97–35, Items IV–D–19, IV–D–20, IV–D–23, IV–D–24 and IV–G–09). Two commenters stated that the requirement to perform quarterly evaluations of the MPC, MEC and MPF values is unnecessary and excessive (see Docket A–97–35, Items IV–D–11 and IV–G–02). One commenter recommended using the guideline in section 2.1 of Appendix A to determine whether span and range adjustments are needed (see Docket A–97–35, Item IV–D–11). Another commenter recommended that EPA allow data points that are clear ''outliers'' to be excluded from quarterly span and range evaluations (see Docket A–97–35, Item IV–D–04). After carefully considering these comments, EPA has decided to withdraw the prescriptive proposed procedures for making span and range adjustments. Instead, the final rule requires that span and range adjustments be made only when the MPC, MEC or MPF changes ''significantly.'' This is similar to the original guideline in the January 11, 1993 rule, except that a ''significant'' change was undefined in that rule. In today's rule, a significant change in the MPC, MEC or MPF means that the guideline of section 2.1 of Appendix A (for the majority of the readings to be between 20 and 80% of the range, with certain allowable exceptions) cannot be met, as determined either by the owner or operator or through an audit by a regulatory agency. The Agency has also reduced the frequency of mandatory evaluations of the MPC, MEC and MPF values. In the final rule, only an annual evaluation of these values is required. The results of the annual evaluations must be kept on-site, in a format suitable for inspection.

Two commenters stated that the proposed requirement to treat the two ranges of a dual-range monitor as separate monitoring systems or as two separate components of the same system would cause additional programming costs and would be technically difficult to implement (see Docket A–97–35, Items IV–D–4 and IV–G–02). The commenters requested that EPA continue to allow the low and high ranges to be represented in the monitoring plan by a single component. After consideration, the Agency has decided that the commenters' request is reasonable and has included this option in the final rule. Note, however, that the use of this option is restricted to dual-range analyzers that use electronic gain to produce the two ranges. Today's rule requires the use of a special dual-range component type code when this option is selected. EPA will provide the necessary type code and reporting guidance in the electronic data reporting (EDR) instructions for EDR version 2.1.

Two commenters stated that 200% of MPC is too high for the proposed default high range value in sections 2.1.1.3(f) and 2.1.1.4(e) of Appendix A, for the case where the owner or operator uses a default value instead of operating a high-range monitor (see Docket A–97–35, Items IV–D–05 and IV–D–24). A third commenter objected to the proposed value of 200% of the range, which is to be reported during full-scale exceedances (see Docket A–97–35, Item IV–G–05). Without a functional high range monitor, it is not possible to determine the exact pollutant concentration when a control device malfunctions or when a full-scale exceedance occurs. In the preamble to the proposed rule, EPA cited one instance in which the high SO_2 range was exceeded and the estimated SO_2 concentration (based on fuel sampling) was estimated to be about 150% of the range (see 63 FR 28058). For this reason, the proposed values of 200% of the range (for full-scale exceedances) and

200% of the MPC (for the default high range value) have been retained in the final rule. EPA maintains that these values must be conservative, based on a ''worst case'' analysis to ensure that emissions will not be under-reported. The Agency believes that if spans and ranges are properly set, full-scale exceedances will be relatively rare. Also, EPA anticipates that the majority of the units for which owners or operators will elect to use the default high range option have reliable emission controls and the default value will rarely, if ever, have to be used.

One commenter objected to the proposed changes to the method of calculating MPC and MEC values, expressing concern that the revisions might require his existing span and range values to be re-calculated (see Docket A–97–35, Item IV–G–02). Another commenter (mistakenly) interpreted the proposed definition of the MPC for CO_2 in section 2.3.1 of Appendix A to mean that his existing CO_2 span values would have to be re-determined (see Docket A–97–35, Item IV–D–04). A third commenter asked EPA to ''grandfather'' existing span and range values (see Docket A–97–35, Item IV–D–20). It is not, and never has been EPA's intent to require utilities to change their existing spans and ranges, provided that they meet the guideline of section 2.1 of Appendix A (for the majority of the readings to be between 20 and 80% of full-scale, with certain allowable exceptions). The Agency does not believe that ''grandfathering'' of any existing part 75 span and range values is necessary. The final rule simply adds flexibility to the procedures for determining spans and ranges. Affected units with previously-determined span and range values that meet the guideline of section 2.1 of Appendix A do not have to change their current span or range values. To further alleviate undue concern about this, the Agency has withdrawn the proposed changes to the method of determining whether a dual span is required. Rather than comparing the MEC value(s) to the MPC value(s) (as proposed), today's rule specifies that the MEC value should be compared to the high range value. This is essentially the same as the requirement in the current rule.

Finally, one commenter objected to the proposed requirement to perform the RATA at the low range of the monitor on units that have scrubbers. The commenter urged EPA to revert to the original rule and allow the RATA to be performed at whatever range the CEMS is operating on at the time of the RATA (see Docket A–97–35, Item IV–G–3). EPA does not agree with the commenter. For units with SO_2 scrubbers, the vast majority of the data is collected on the low range. Therefore, the SO_2 RATA should be performed on that range. If the scrubber malfunctions at the time of a scheduled SO_2 RATA, the RATA should either be rescheduled later in the quarter or should be done during the 720 unit operating hour grace period allowed under revised section 2.3.3 of Appendix B.

E. Flow-to-Load Ratio Test Requirements

Background: The quality assurance requirements for flow rate monitoring systems in Appendices A and B of part 75 include daily calibration error tests, daily interference checks, quarterly leak checks (for differential pressure type monitors only), and semiannual or annual RATAs. Of these required QA tests, only the RATA provides a true evaluation of a flow monitor's measurement accuracy by direct comparison against an independent reference method. The daily calibration error test checks the system's internal electronic components by means of reference signals. The calibration error test is useful in that it can diagnose certain types of monitor problems, but it does not evaluate the system's ability to measure an actual stack gas flow rate. Because of this limitation, EPA believes that a more substantive, periodic QA test is needed to ensure that the accuracy of the reported flow rate data is maintained in the interval between successive RATAs. The Agency is particularly concerned about the potential for poor data quality from flow monitors that are not properly maintained.

In view of this, EPA proposed to add a new flow monitor quality assurance test, the ''flow-to-load ratio test,'' to part 75 in section 7.7 of Appendix A and section 2.2.5 of Appendix B. A similar test was first suggested to the Agency by a flow monitor manufacturer (see Docket A–97–35, Item II–D–69). The flow-to-load ratio test, which would be performed quarterly, would be required beginning in the second quarter of the year 2000. The basic premise of the flow-to-load ratio test is that a meaningful correlation exists between the stack gas volumetric flow rate and unit load. In general, for a single unit discharging to a single stack, as the load increases, the flow rate increases proportionally, and the flow rate at a given load should remain relatively constant if the same type of fuel is burned. Common stacks are somewhat less predictable, because the same combined unit load can be produced in a number of ways by using different combinations of boilers. Despite this, if the diluent gas concentration is properly taken into account, the flow-to-load characteristics of common stacks often become more normalized. The flow-to-load ratio, or a normalized ratio, such as the gross heat rate (GHR) can thus serve as a quantitative indicator of flow monitor accuracy from quarter to quarter until the next RATA is performed.

The proposed rule provided a calculation methodology for the quarterly flow-to-load or GHR evaluation. A ''reference'' flow-to-load ratio or GHR would be established at the time of each normal-load flow RATA, using data from the flow rate reference method. Then, in subsequent quarters, hourly data from the flow monitor would be compared to the reference ratio or GHR, and an absolute average percentage difference between the hourly data and the reference ratio would be calculated. If the percentage difference exceeded certain limits, the utility would be required to investigate to try to establish the cause of the test failure. If the investigation indicated a problem with the flow monitor, the utility could perform corrective actions, followed by an abbreviated flow-to-load diagnostic test, to demonstrate that the corrective actions were effective. However, if the investigation could not establish the cause of the flow-to-load test failure, a normal load flow RATA would be required.

Today's final rule adopts the flow-to-load ratio test provisions. The final rule is essentially the same as the proposal except for a few minor changes in response to comments received.

Discussion: EPA received comments on the proposed quarterly flow-to-load ratio test from seven utilities, two state agencies, one utility regulatory response group and one flow monitor vendor. One state agency was supportive of the test, because it can serve as a quantitative indicator of flow monitor performance from quarter to quarter (see Docket A–97–35, Item IV–D–9). The flow monitor vendor also favored the test, because it will help to ensure that all flow monitoring technologies perform in a reliable manner (see Docket A–97–35, Item IV–D–12). Several utility commenters objected to the proposed test, believing it would be burdensome, time-consuming, expensive to implement (requiring significant DAHS software modifications), and difficult to pass (see Docket A–97–35, Items IV–D–16, IV–G–5, IV–G–9, IV–G–2). One commenter suggested that the test be used as a warning to take corrective action rather than using it to directly validate or invalidate flow rate data (see

Docket A–97–35, Item IV–D–11). Another commenter recommended that for common stacks, additional hours be exempted from the data analysis, specifically hours in which the combination of boilers and loads does not match the combination used during the last normal load flow RATA (see Docket A–97–35, Item IV–D–17). Two commenters recommended increasing the threshold to qualify for a less stringent flow-to-load specification from 50 MW to 60 or 70 MW (see Docket A–97–35, Items IV–D–11, IV–D–2). Two commenters recommended reducing the frequency of flow RATAs based on good performance in the flow-to-load test; specifically, one commenter advocated performing flow RATAs every other year and the other commenter recommended performing a flow RATA once every five years (see Docket A–97–35, Items IV–D–22, IV–G–2). One commenter stated that the proposed flow-to-load methodology does not adequately address multiple stack configurations where one of the stacks is a bypass stack, and also recommended that EPA make it clear that the flow-to-load data analysis only applies to reported data and not to redundant backup monitor data which are not reported (see Docket A–97–35, Item IV–G–2). Finally, the utility regulatory response group found the proposal to be an improvement over the pre-proposal draft that was circulated in May, 1997, but took issue with the following: (1) The method of calculating the test results, using the absolute value of, rather than the arithmetic, percentage of differences between the hourly flow-to-load ratios and the reference ratio; (2) failure of the proposal to address units with bypass stacks or other complex stack configurations; and (3) allowing only one week after the end of the quarter to investigate and troubleshoot the flow monitor when a flow-to-load test failure occurs, before a RATA requirement is triggered (see Docket A–97–35, Item IV–D–20).

Today's rule includes flow-to-load test provisions in section 7.7 of Appendix A and section 2.2.5 of Appendix B. The final rule is essentially the same as the proposal, except for the following changes, which have been incorporated in response to the comments received. First, a new section 7.8 has been added to Appendix A, which allows owners or operators of units with complex stack configurations to petition for an exemption from quarterly flow-to-load testing. Any such petition would have to provide information and data which demonstrate to the satisfaction of the Administrator that the flow rate through the complex stack configuration cannot be reasonably correlated to unit load. Second, for a unit with a multiple stack discharge configuration consisting of a main stack and a bypass stack (e.g., for a unit with a wet SO_2 scrubber), the flow-to-load test is to be performed on an individual stack basis and hours in which emissions are discharged simultaneously through both stacks may be excluded from the quarterly flow-to-load analysis. Third, the threshold to qualify for a less stringent flow-to-load specification has been raised from 50 MW to 60 MW. Fourth, when a flow-to-load or GHR test is failed, two weeks, rather than one, are allowed after the end of the quarter to investigate the cause of the test failure before triggering a RATA requirement.

EPA does not agree with the commenters who characterized the proposed flow-to-load test as time-consuming, burdensome, and difficult to implement (requiring extensive software revision). The Agency believes that implementation of the flow-to-load test will not require any special modification of existing part 75 DAHS systems or software. All of the information needed to perform the quarterly flow-to-load or GHR analysis is currently reported in the electronic quarterly report required under § 75.64. Rather, a PC-based computer program will be needed, which can extract the essential information from the quarterly report and analyze it. Once such a computer program is written, analysis of the quarterly flow rate and load data should become a routine operation which will be neither burdensome nor time-consuming.

The Agency also disagrees with those commenters who contended that the flow-to-load test will be difficult to pass. On the contrary, the flow-to-load test should be relatively easy to pass, provided that the flow monitor is properly operated and well-maintained. Prior to issuing the proposed rule, EPA analyzed quarterly flow rate and load data from the third quarter of 1996 for 21 units and stacks, including 9 single units, 11 common stacks, and 1 multiple-stack unit. The units chosen for this analysis were selected as a representative sample of units that would be affected by this QA test requirement and included various operational circumstances (e.g., base loaded and peaking units, single fuel units, and units that burn multiple fuels). The flow-to-load and GHR test methodologies were applied to each unit or stack, excluding none of the normal load data from the analysis. The results of the flow-to-load and GHR data analyses were nearly the same. Only one failure of the quarterly flow-to-load test was observed in each analysis (i.e., the failure rate was <5.0 percent). The value of E_f (the average percentage difference between the hourly ratios and the reference ratio) was 6.1 percent for the analysis of the flow-to-load ratios and 6.4 percent for the simulated GHR analysis (with diluent gas corrections). However, as noted by one of the commenters, the Agency acknowledges that these data analyses were performed using the calculation method described in the May, 1997 pre-proposal draft of the rule revisions, i.e., using the arithmetic percentage difference between each hourly flow-to-load ratio and the reference ratio, rather than the absolute percentage difference prescribed in the proposed rule. To address the commenter's concern, EPA has re-analyzed the data using the absolute percentage difference. The results of the data analysis using the absolute percentage difference were nearly the same as the results using the arithmetic percentage difference. The failure rate was the same (<5%) and the value of E_f was 7.3 percent for the analysis of the flow-to-load ratios and 8.0 percent for the simulated GHR analysis (with diluent gas corrections), which is still well below the 15.0 percent tolerance limit (see Docket A–97–35, Item IV–A–3). Thus, it appears to make very little difference, in terms of ease of passing, whether the absolute percentage difference or the arithmetic percentage difference is used in the flow-to-load and GHR calculations. Therefore, the flow-to-load and GHR calculation methodology has been finalized as proposed using the absolute percentage difference.

Two commenters suggested that the flow RATA frequency should be reduced based on good performance on the quarterly flow-to-load test (see Docket A–97–35, Items IV–D–22 and IV–G–02). The Agency agrees with the commenters that with the addition of the new QA tests it is reasonable to lessen the frequency of the annual three load flow RATA. Therefore, EPA is also adopting the following three provisions reducing the flow RATA requirements: (1) Routine flow RATAs are changed from three-load tests to two-load tests; (2) a single-load annual flow RATA is allowed if the unit operates at one load level for ≥85 percent of the time since the last annual flow RATA; and (3) a three-load flow RATA is required only once every five years and whenever the instrument is re-linearized. EPA has adopted these reduced flow RATA

requirements principally because of the reasonable assurance of data quality that will be provided in between RATAs by the new flow-to-load test. Note, however, that the flow-to-load ratio test, which analyzes a limited amount of flow rate data at a single load level, does not serve as a replacement for annual RATA testing. Rather, the flow-to-load ratio test helps to ensure that the flow monitor remains accurate in between successive semiannual or annual RATAs.

F. RATA and Bias Test Requirements

1. RATA Load Levels

Background: The previous provisions of part 75 were neither sufficiently standardized nor clear in defining the appropriate load levels for RATAs. For example, the previous rule required gas monitor RATAs to be conducted at normal load and required gas and flow rate monitor bias adjustment factors to be determined at normal load, but no definition of normal load was provided. In addition, section 6.5.2 of Appendix A specified that the ''low'' load audit point for a 3-level flow RATA can be located anywhere from the minimum safe, stable load to 50.0 percent of the maximum load, and no minimum separation is required between the audit points at adjacent load levels. If adjacent audit points are too close together, a multiple load flow evaluation loses its significance.

EPA proposed revisions to Appendix A of part 75, which would more clearly define the load levels at which RATAs are done in order to achieve greater consistency in the way that RATAs are performed. The proposed methodology, which would become effective as of April 1, 2000, would require the utility to define the ''range of operation'' for each affected unit or common stack (except for peaking units). The range of operation would extend from the minimum safe, stable load to the maximum achievable load. The ''low'' load level would then be defined as 0–30% of the range of operation, the ''mid'' load level would be 30–60% of the range and the ''high'' load level would be 60–100% of the range. The proposed methodology would require a load frequency distribution (histogram) to be developed, prior to each annual RATA, to determine the percentage of time the unit or stack has operated at each load level in the previous four ''QA operating quarters.'' A summary of the data used for the load frequency determination would be maintained on-site in a format suitable for inspection, and the results of the determination would be included in the electronic quarterly report under § 75.64. The most frequently used load level would then be designated as the ''normal'' load. The second most frequently used load could, at the discretion of the owner or operator, be designated as a second normal load level. Gas monitor RATAs would be required at the normal load level. Routine quality assurance RATAs for flow monitors would be done at the two most frequently used load levels. Today's rule adopts the proposed changes with certain modifications in response to comments.

Discussion: The Agency received comments on the proposed method of determining RATA load levels from three individual utilities and from two utility regulatory response groups. Only two comments were received on the proposed definitions of ''range of operation,'' ''low,'' ''mid,'' and ''high'' load levels. One commenter supported the effort to establish load level definitions, but found the proposal to be too inflexible and complicated and suggested that EPA should permit overlapping load ranges (see Docket A–97–35, Item IV–D–20). The other commenter requested that EPA modify the proposed definition of the ''minimum safe, stable load'' for common stacks. The commenter expressed concern that for base-loaded units which share a common stack, the proposed definition might require a unit to be shut down to attain the low load level in a 3-load flow RATA (see Docket A–97–35, Item IV–D–24). Four commenters opposed the proposed requirement to develop a historical load frequency distribution to establish the normal load level(s) for the unit or stack, stating that the load frequency is too variable (being dependent on unit availability, operation, and dispatch) and that the new requirement would add another level of unnecessary data collection and manipulation (see Docket A–97–35, Items IV–D–20, IV–D–24, IV–D–19, and IV–D–23). Another commenter suggested that RATA load ranges should be based on the typical load requirements for the quarter in which the RATA is done, particularly if the historical data are no longer representative. The commenters further recommended that EPA should: (1) eliminate the requirement to use four operating quarters of data; (2) allow extenuating data to be excluded; (3) allow recent changes to be considered when selecting load ranges; and (4) allow utilities to consider forecasted usage of a unit when selecting load ranges (see Docket A–97–35, Item IV–D–20). Finally, one commenter objected to the proposed requirement to report the results of the load frequency data analysis electronically, stating that requiring electronic reporting of the results provides no advantage over keeping the data analysis on-site and that such reporting would require DAHS software changes (see Docket A–97–35, Item IV–G–2).

Today's rule finalizes the proposed definitions of the ''range of operation,'' and the ''low,'' ''mid,'' and ''high'' load levels in section 6.5.2.1 of Appendix A and the associated requirement to report the upper and lower boundaries of the range of operation, with one minor revision. A provision has been added for frequently-operated (e.g., base-loaded) units that share a common stack, which allows the ''minimum safe, stable load'' to be determined in a different manner. For such units, the owner or operator may use the sum of the minimum safe, stable loads for the individual units as the minimum safe stable load for the common stack (rather than using the lowest of the minimum safe, stable load values for the individual units). The Agency believes that this adequately addresses the commenter's concern that one or more units might have to be shut down in order to attain the ''low'' load level during a 3-load flow RATA.

Section 6.5.2.1 of Appendix A of today's rule also finalizes the proposed methodology for determining normal load and for selecting the appropriate load levels for the annual 2-load flow RATAs, with revisions based on comments received. In the final rule, a determination of the normal load level(s) and the appropriate flow RATA load levels is still required, but it has been made a one-time requirement, rather than an annual requirement. The requirement becomes effective on April 1, 2000, but owners or operators may comply with it prior to that date. The owner or operator must review historical load data for the unit or stack, for a minimum of four representative operating quarters. From these data, the percentage of unit operating time at each load level (''low,'' ''mid'' or ''high'') will be determined. The historical load data may be analyzed by any suitable means; construction of a histogram, per se, is not required. The load level used the most frequently will be designated normal, and the second most frequently used load level may, at the discretion of the owner or operator, be designated as a second normal load. The two most frequently used load levels are the load levels at which the annual 2-load flow RATA will be performed. The results of the historical load data analysis will be reported in the electronic quarterly report as part of the electronic monitoring plan. EPA

believes that reporting one additional monitoring plan record will not prove to be burdensome. A summary of the data used for the load determinations and the calculated results must be kept on-site, in a format suitable for inspection.

EPA continues to believe that a review of historical operating load data is a reasonable way to standardize the determination of the normal load level(s) and the appropriate flow RATA load levels for a unit or stack. In order to maintain national consistency and to ensure that a ''level playing field'' is maintained among affected utilities, the Agency believes that a standardized procedure is necessary. Although several commenters took issue with the specifics of the proposed methodology, none of them provided a sufficiently detailed alternative procedure for serious consideration by the Agency. Requests to ''allow exclusion of extenuating data'' and ''permit consideration of recent changes when selecting load ranges'' do not provide a sufficient basis for the development of appropriate regulatory language. Further, since the standardized procedure is based on data for four operating quarters, any unrepresentative data is likely to have minimal effect. Therefore, EPA did not incorporate most of the commenters' suggestions. However, to address the concern of several commenters about possible variability in unit load and manner of unit operation, a provision has been added to section 6.5.2.1 of Appendix A which requires the historical load analysis to be repeated if the way in which a unit operates changes significantly and the previously-determined normal load level(s) and the two most frequently used load levels change. The new provision requires a minimum of two representative operating quarters of historical load data to document that a change in the manner of unit operation has actually occurred.

2. Single-Point Reference Method Sampling

Background: Section 6.5.6 of Appendix A to part 75 gives the traverse point location requirements for reference method sampling during relative accuracy test audits (RATAs) of gas monitoring systems. The reference method sampling points are to be located along a line, in accordance with section 3.2 of Performance Specification No. 2 in Appendix B to 40 CFR part 60. Performance Specification No. 2 requires three reference method sampling points for each RATA test run. EPA proposed changes to section 6.5.6 of Appendix A, pertaining to RATA traverse point selection. Proposed section 6.5.6 would allow single-point reference method sampling to be used in two specific instances: (1) for all moisture determinations, a single reference method point, located at least 1.0 meter from the stack wall, could be used; and (2) for flue gas sampling, a single reference method measurement point, located no less than 1.0 meter from the stack wall, could be used at any test location if a stratification test is performed prior to each RATA at the location and certain acceptance criteria are met.

In order to implement the second option (single-point gas sampling), a 12-point stratification test, as described in proposed section 6.5.6.1, would have to be passed one time at the sampling location, meeting the acceptance criteria for single-point sampling given in proposed section 6.5.6.3 of Appendix A. The location would qualify for single-point gas sampling if the concentration at each individual traverse point differed by no more than ± 5.0 percent from the arithmetic average concentration for all traverse points. The results would also be acceptable if the concentration at each individual traverse point differed by no more than ± 3.0 ppm or 0.3 percent CO_2 (or O_2) from the arithmetic average concentration for all traverse points. Once a 12-point stratification test was passed at the candidate sampling location, either the 12-point test or an abbreviated 3-point or 6-point stratification test, as described in proposed section 6.5.6.2, would have to be passed prior to subsequent RATAs at the location.

Today's rule finalizes the provisions for single-point moisture and gas reference method sampling, with certain modifications in response to comments received. The criteria in today's rule to qualify for single-point sampling are more stringent than the criteria in the proposed rule.

Discussion: EPA received comments from two utilities and three State air regulatory agencies on the proposal to allow single-point reference method sampling. One of the utility commenters favored allowing single-point sampling, viewing it as an excellent step to improve the overall efficiency of RATA testing (see Docket A–97–35, Item IV–D–21). The other utility commenter also favored the proposal, believing that it would reduce the manpower requirements for gas RATA testing (see Docket A–97–35, Item IV–D–22). One State agency commenter opposed the unrestricted use of single-point moisture sampling, stating that the moisture results could be biased if gas stratification is present in the stack. Another State agency commenter viewed the proposal to allow single-point reference method sampling as unfavorable, expressing concern that single-point sampling may not yield valid results, particularly if the sampling point is too near the stack wall, where air in-leakage can occur (see Docket A–97–35, Item IV–D–9). The third State agency commenter appeared to take issue with the use of a 3-point abbreviated stratification test, stating that for the large-diameter stacks in the Acid Rain Program, a three point test is not adequate to demonstrate the absence of stratification.

In response to the comments received, the single-point reference method provisions in section 6.5.6 of Appendix A of today's rule are more restrictive than the provisions in the proposal. After careful consideration, EPA has decided to allow single-point reference method sampling, but to place additional restrictions on its use. The Agency believes that some of the state agency commenters' concerns about the proposed single-point sampling methodology are valid. Accordingly, today's final rule addresses these concerns.

Today's rule allows the unrestricted use of single-point moisture sampling only in applications where the moisture data are used to determine the stack gas molecular weight. For all other moisture measurement applications, i.e., for moisture monitoring system RATAs or when moisture data are used to correct emission data from a dry basis to a wet basis (or vice-versa), single-point moisture sampling is only permitted if a 12-point pollutant or diluent gas stratification test is performed and passed (at the 5.0 percent specification in section 6.5.6.3 of Appendix A) prior to the RATA. Similarly, for flue gas sampling, today's rule allows the use of single-point reference method sampling only if a 12-point gas stratification test is performed and passed at the 5.0 percent specification prior to the RATA. Use of an abbreviated (3- or 6-point) stratification test as a means of qualifying for single-point sampling is not allowed.

Finally, when a test location qualifies for single-point reference method sampling, today's rule specifies that the measurement point must be located at least 1.0 meter from the stack wall and must be situated along one of the measurement lines used in the 12-point stratification test. EPA believes that these modifications to the proposed single-point reference method sampling methodology are necessary to ensure

that representative samples will continue to be obtained.

G. Data Validation

1. Data Validation During Monitor Certification and Recertification

Background: The previous version of part 75 specified that for any replacement, change, or modification to a monitoring system requiring recertification of the CEMS, all data from the CEMS are invalid from the hour of that replacement, change, or modification until the hour of completion of all required recertification tests. The proposed rule would have revised § 75.20(b)(3) to conditionally allow emission data generated by the CEMS during a recertification test period to be used for part 75 reporting, provided that the required tests are successfully completed in a timely manner and that certain data validation rules are followed during the recertification test period. Proposed sections 6.2, 6.3.1, and 6.5 of Appendix A would have allowed these new data validation procedures to also be applied to the initial certification of monitoring systems. The intended purpose of the proposed revisions is to minimize the number of hours of substitute data or maximum potential values that must be reported during a monitor certification or recertification period.

In proposed § 75.20(b)(3), specific rules were provided for data validation during the recertification test period. The recertification test period would begin with the first successful calibration error test (known as a ''probationary calibration error test'') after making the change to the CEMS and completing all necessary post-change adjustments (e.g., reprogramming or linearization) of the CEMS. The post-change activities could include preliminary tests such as trial RATA runs or a challenge of the monitor with calibration gases. Data from the CEMS would be considered invalid from the hour in which the replacement, modification, or change to the system is commenced until the hour of completion of the probationary calibration error test, at which point the data status would become ''conditionally valid.''

The conditionally valid status of the CEMS data would continue throughout the recertification test period, provided that the required recertification tests were done ''hands-off'' (i.e., with no adjustments, such as reprogramming or linearization of the CEMS, other than the calibration adjustments allowed under proposed section 2.1.3 of Appendix B) and provided that the recertification tests and required daily calibration error tests continued to be passed. If all of the required recertification tests and calibration error tests were passed hands-off, with no failures and within the required time period, then all of the conditionally valid emission data recorded by the CEMS during the recertification test period would be considered quality assured and suitable for part 75 reporting. However, if any required test was failed, the conditionally valid data would, in most cases, be invalidated and a new recertification test period would have to be initiated, following corrective actions.

Today's rule finalizes the CEMS validation procedures for certifications and recertifications, with certain modifications in response to comments received.

Discussion: EPA received strongly supportive comments on the proposed revisions to § 75.20(b)(3) from five utilities, one state air regulatory agency and two utility regulatory response groups. However, two utilities asked the Agency to modify the proposal to allow trial gas injections and preliminary RATA runs to be done during the recertification test period, rather than prior to it. One commenter stated that preliminary gas injections and RATA runs, which are considered to be a valuable maintenance tool, should be allowed following the probationary calibration error test, and, provided that the results of the trial runs are acceptable, the recertification should be allowed to proceed (see Docket A–97–35, Item IV–G–3). Another commenter requested that the proposal be revised to allow a single challenge with each of the three gases prior to a linearity test and to allow up to five preliminary trial runs prior to a RATA (see Docket A–97–35, Item IV–G–5).

Today's rule finalizes the proposed data validation procedures in § 75.20(b)(3) for monitor certification and recertification, with the following modifications in response to the comments. First, an introductory statement of applicability has been added at the beginning of § 75.20(b)(3), clearly indicating that the provisions of the section apply both to recertifications and to initial certifications. The statement of applicability also allows the data validation procedures to be applied, at the discretion of the owner or operator, to the routine quality assurance linearity tests and RATAs required under Appendix B of part 75 (see the section on ''Data Validation for RATAs and Linearity Checks'' in this preamble, for a further discussion of this option). Second, proposed paragraph (b)(3)(x) of § 75.20 has been merged with proposed paragraph (b)(3)(i), for greater clarity; both paragraphs deal with missing data substitution prior to the recertification test period. Third, the definition of a ''hands-off'' recertification test in § 75.20(b)(3)(v) has been revised to make it clear that once a recertification test has begun, only routine calibration adjustments following daily calibration error tests are permitted until the test is completed. Fourth, language has been added to § 75.20(b)(3) to address the case in which a multi-load flow RATA is passed at one or more load levels and then failed at a subsequent load level.

Regarding the fourth revision to § 75.20(b)(3) described in the previous paragraph, 2.3.2(e) of Appendix B of today's rule states that in such cases, only the RATA at the failed load level needs to be repeated (unless re-linearization of the monitor is necessary, in which case a 3-load RATA is required). Because of this new Appendix B provision, the following corresponding data validation provisions have been added to §§ 75.20(b)(3)(vii)(A) and 75.20(b)(3)(vii)(B): (1) upon failure of the RATA at the particular load level, the length of the new recertification test period is not 720 unit operating hours, but is equal to the number of hours remaining in the original recertification test period at the time of test failure; and (2) data invalidation is prospective, beginning with the hour of failure of the RATA at the particular load level; therefore, conditionally valid data recorded prior to the test failure at the particular load level are not invalidated. Finally, in response to the comments received, a new paragraph, (b)(3)(vii)(E), has been added to § 75.20 to address the issue of trial RATA runs and pre-test gas injections. Section 75.20(b)(3)(vii)(E) allows pre-test trial gas injections and pre-RATA runs to be done during the recertification period, for the purpose of optimizing the performance of the monitoring system. A trial run or injection will not affect the status of previously-recorded conditionally valid data, provided that: (1) the results of the trial run are within the Appendix A specifications for a passed linearity test or RATA (i.e., for a trial gas injection, within ±5% or 5 ppm of the reference gas or, for a trial RATA run, if the average reference method and the average CEMS readings differ by no more than ±10% of the reference method value, or ±15 ppm, or ±0.02 lb/mmBtu, or ±1.5% H_2O, as applicable); (2) no adjustments are made

to the calibration of the CEMS following the trial run, other than the adjustments allowed under section 2.1.3 of Appendix B; and (3) the CEMS is not repaired, re-linearized, or reprogrammed after the trial run. As long as these conditions continue to be met, the CEMS can be further optimized without data loss. However, if, for any trial run or injection the conditions are not met, the trial run or injection is treated as a failed or aborted linearity check or RATA and the applicable provisions in §§ 75.20(b)(3)(vii)(A) and 75.20(b)(3)(vii)(B) pertaining to aborted or failed recertification tests must be followed.

2. Data Validation for RATAs and Linearity Checks

Background: EPA proposed rules for CEMS data validation prior to and during the periodic linearity tests and RATAs required by part 75. These new provisions were found in proposed sections 2.2.3 and 2.3.2 of Appendix B. According to these provisions, a linearity test or RATA could not be started if the CEMS were operating ''out-of-control'' with respect to any of its other daily, semiannual, or annual quality assurance tests. Prior to the test, both routine and non-routine calibration adjustments, as defined in proposed section 2.1.3 of Appendix B, would be permitted. During the linearity or RATA test period, however, no adjustment of the monitor would be permitted except for routine daily calibration adjustments following successful daily calibration error tests. For 2-level and 3-level flow RATAs, no linearization of the monitor would be permitted between load levels. If a linearity check or RATA was failed or aborted due to a problem with the monitor, the monitor would be declared out-of-control as of the hour in which the test is failed or aborted. Data from the monitor would remain invalid until the hour of completion of a subsequent successful test of the same type.

The proposed rule also attempted to clarify the way in which linearity and RATA test results are to be reported to EPA in the electronic quarterly report required under § 75.64. Proposed sections 2.2.3 and 2.3.2 of Appendix B specified that only the results of completed and partial tests which affect data validation would have to be reported. That is, all completed passed tests, all completed failed tests, and all tests aborted due to a problem with the CEMS would have to be included in the quarterly report. Therefore, aborted test attempts followed by corrective maintenance, re-linearization of the monitor, or any other adjustments other than those allowed under proposed section 2.1.3 of Appendix B would have to be reported. However, tests which are aborted or invalidated due to problems with the calibration gases or reference method or due to operational problems with the affected unit(s) would not need to be reported, because such runs do not affect the validation status of emission data recorded by the CEMS. In addition, aborted RATA attempts which are part of the process of optimizing a monitoring system's performance would not have to be reported, provided that in the period from the end of the aborted test to the commencement of the next RATA attempt: (1) no corrective maintenance or re-linearization of the CEMS was performed, and (2) no adjustments other than the calibration adjustments allowed under proposed section 2.1.3 of Appendix B were made. However, such aborted RATA runs would still have to be documented and kept on-site as part of the official test log.

Today's rule finalizes the CEMS data validation requirements for RATAs and linearity checks. The final rule has been modified from the proposal, based on comments received.

Discussion: EPA received comments on the proposed data validation procedures for RATAs and linearity checks from one state air regulatory agency, two utilities and one utility regulatory response group. Two of the commenters found the proposed rule language defining the allowable pre-test adjustments to be inconsistent with the preamble language found at 63 FR 28075. The commenters noted an apparent contradiction between the preamble statement that there is ''no significant risk in allowing pre-RATA adjustments provided that the monitor's accuracy between successive RATAs can be reasonably established'' and the rule language in section 6.5(a)(1) of Appendix A that ''no adjustments, linearizations or reprogramming of the CEMS other than the calibration adjustments described in section 2.1.3 of Appendix B to this part, are permitted prior to and during the RATA test period.'' Both commenters expressed concern that this proposed rule language appeared to exclude important activities such as re-linearization of a flow monitor (see Docket A–97–35, Items IV–D–20, IV–G–2). Another commenter also objected to the proposed language in section 6.5(a)(1) of Appendix A, stating that technicians need to be able to perform evaluations and adjustments of flow and gas measurement systems prior to conducting a RATA (see Docket A–97–35, Item IV–G–3). Another commenter took issue with the provisions in proposed sections 2.2.3 and 2.3.2 of Appendix B which allow ''non-routine'' adjustments to be made prior to linearity tests and RATAs. The commenter especially objected to the idea of allowing adjustments in a direction away from the reference gas tag value, believing that this compromises the integrity of the audit and sets an ''unfortunate precedent'' (see Docket A–97–35, Item IV–D–11).

Today's rule finalizes the data validation provisions for linearity checks and RATAs in sections 2.2.3 and 2.3.2 of Appendix B. Based on the comments received, EPA has made substantive revisions to the proposed rule in an attempt to clarify the allowable pre-test adjustments and the rules for validating the CEMS data. Today's rule specifies that when a linearity check or RATA is due, the owner or operator has three options. First, the test may be done ''cold,'' with no pre-test adjustments of any kind. Second, the test may be done after making only the routine or non-routine calibration adjustments allowed under section 2.1.3 of Appendix B. Under this second option, trial gas injections and preliminary RATA runs are allowed, followed by additional adjustments (if necessary) within the limits of section 2.1.3 of Appendix B, to optimize the monitor's performance. The trial runs or injections need not be reported, provided that they meet the acceptance criteria for trial RATA runs and gas injections in § 75.20(b)(3)(vii)(E) (see the section of this preamble entitled ''Data Validation During Monitor Certification and Recertification'' for further discussion of these acceptance criteria). If the acceptance criteria are not met, the trial run is counted as a failed or aborted test. Third, the CEMS may be repaired, re-linearized or reprogrammed prior to the quality assurance test. In this case, the CEMS may either be considered out-of-control from the hour of commencement of the corrective maintenance, re-linearization or reprogramming until completion of the required quality assurance test or the owner or operator may follow the data validation procedures in § 75.20(b)(3) upon completion of the necessary corrective maintenance, re-linearization, or reprogramming.

EPA believes that the revisions to sections 2.2.3 and 2.3.2 of Appendix B address the commenters' concerns about pre-test adjustments. For example, if, at the time of a scheduled flow RATA, the owner or operator decides to re-linearize the primary flow monitor to optimize its performance, this would be permissible under the third option above. However, re-linearization of a flow monitor

triggers a requirement to perform a 3-load RATA. Therefore, if the monitor is declared out-of-control from the hour of the re-linearization until the hour of completion of the 3-load RATA (as would be required by the proposed rule), this could result in significant data loss, since a 3-load RATA can take days (or even weeks) to complete, depending on electrical demand. For this reason, today's rule allows the owner or operator to use the recertification data validation procedures in § 75.20(b)(3) to supplement the quality assurance provisions in Appendix B. In this example, if the owner or operator opts to use the data validation procedures in § 75.20(b)(3), data from the flow monitor would be considered conditionally valid upon completion of a ''probationary calibration error test,'' following the re-linearization of the monitor. The procedures in § 75.20(b)(3)(vii)(E) allow for trial runs and further optimization of the monitor prior to the RATA. If the 3-level flow RATA is then passed in accordance with the procedures of § 75.20(b)(3) and within the allotted time frame (indicating that the re-linearization was successful), the conditionally valid data will become quality assured and may be used for reporting.

For the following reasons, EPA does not agree with the commenter who opposed allowing ''non-routine'' calibration adjustments prior to a quality assurance test. The ''non-routine'' adjustments described in section 2.1.3 of Appendix B allow adjustments only within the performance specifications of the instrument. When a monitor is initially certified, it must pass several quality assurance tests, one of which is a 7-day calibration error test. The monitor must demonstrate, for 7 consecutive operating days, that it is capable of meeting a calibration error specification of ±2.5 percent of the instrument span (±3.0 percent for flow monitors). Once a monitor has been certified, the ''control limits'' for daily calibration error tests of the monitor are twice the performance specification value, i.e., ±5.0 percent of span for gas monitors and ±6.0 percent for flow monitors. Thus, when the ''non-routine'' adjustments described under section 2.1.3 of Appendix B are made prior to a linearity test or RATA, the monitor is actually being held to a tighter specification than is used for daily operation. The Agency therefore does not agree that keeping the instrument's calibration within the performance specification ''band'' at the time of linearity tests or RATAs compromises the integrity of the audits or sets a bad precedent. On the contrary, it demonstrates that the monitor continues to perform in a comparable manner to its performance at the time of initial certification. When the monitor is held to the calibration error specification required for initial certification, the monitor is shown to be capable of passing a linearity test or RATA.

H. Appendix D—Sulfur Dioxide Emissions From the Combustion of Gaseous Fuels

Background: EPA proposed several revisions to the procedures in Appendix D of part 75 for determining sulfur dioxide emissions from gas-fired and oil-fired units. Most of the proposed revisions would provide affected utilities with additional flexibility and sampling options. These changes were generally supported by the comments received and have either been finalized as proposed or with minor revisions and clarifications. However, for gaseous fuels, EPA received a number of significant comments concerning the proposed changes to the definition of the term ''pipeline natural gas'' under § 72.2 and received other comments which have prompted the Agency to re-evaluate the applicability and use of Appendix D. In response to the significant comments received, the Agency is adopting the following final revisions to Appendix D and to § 72.2:

(1) Revised definitions of ''pipeline natural gas,'' ''natural gas'' and ''gas-fired'' have been promulgated in § 72.2;

(2) The applicability of Appendix D has been expanded to include gaseous fuels with any sulfur content (previously, Appendix D had been limited to gaseous fuels with a sulfur content of 20 grains per 100 scf, or less); and

(3) The methodology for determining the frequency of fuel gross calorific value (GCV) under section 2.3 of Appendix D has been modified.

In order to put today's revisions in context, it is necessary to review how the Agency addressed these issues in previous rulemakings. Section 2.4 of Appendix D of the core rules of the Acid Rain Program issued on January 11, 1993, allowed units combusting ''natural gas'' (as defined in § 72.2) to calculate SO_2 mass emissions through either: (1) fuel sulfur sampling and measurement of the fuel flow rate by a certified fuel flowmeter; or (2) the use of a default SO_2 emission rate of 0.0006 lb/mmBtu and heat input determined using a certified fuel flowmeter and monthly analysis for fuel GCV. In the preamble to the January 11, 1993 rule, the Agency stated, ''the definition of ''natural gas'' does not, therefore, include landfill gas, digester gas, biomass, or gasified coal'' (58 FR 3590 and 3596). The Agency further stated in the preamble that, ''essentially sulfur-free fuels such as natural gas, landfill methane, or synthetic propane'' should qualify for the use of Appendix D methodologies. The intent of the Agency in that rulemaking was to allow the use of a default emission rate for SO_2 mass emissions calculations for natural gas and other fuels which have a similar low sulfur content, but not for fuels which have higher sulfur content than natural gas. Appendix D did not effectively address how to determine SO_2 mass emissions for gaseous fuels other than natural gas.

On May 17, 1995 the Agency revised the core Acid Rain rules to add a new definition for ''pipeline natural gas,'' and revised the definitions of ''natural gas'' and ''gas-fired.'' The most significant change in the definition of ''natural gas'' was the addition of the requirement that ''natural gas'' must contain ''one grain or less hydrogen sulfide per 100 standard cubic feet and 20 grains or less total sulfur per 100 standard cubic feet.'' The intent of this additional language was to clarify which gaseous fuels qualified as ''natural gas.'' The criteria used (1 grain hydrogen sulfide (H_2S) and 20 grains total sulfur) were based on contracts and tariff sheets for pipeline natural gas regulated by the Federal Energy Regulatory Commission (FERC). Consistent with this approach, the Agency defined ''pipeline natural gas'' as natural gas provided by a supplier through a pipeline. In addition, the Agency modified the definition of ''gas-fired'' to make it clear that the use of Appendix D was limited to units combusting ''fuel oil,'' ''natural gas,'' and ''gaseous fuels containing no more sulfur than natural gas.'' The default SO_2 emission rate of 0.0006 lb/mmBtu could only be used for the combustion of either natural gas or a fuel with a sulfur content no greater than natural gas. To use the default SO_2 emission rate, the owner or operator was required to demonstrate that the fuel being combusted qualified as natural gas, based on contract or tariff values which indicate that the gas meets the criteria for natural gas H_2S content and total sulfur content.

As noted in the preamble of the proposed rule, the May 12, 1995 revisions apparently did not eliminate confusion concerning the use of the default SO_2 emission rate. The SO_2 default emission rate of 0.0006 lb/mmBtu is equivalent to approximately 0.2 grains hydrogen sulfide per 100

standard cubic feet (scf) of gas, when hydrogen sulfide is the sole source of total sulfur in the gas (as is the case for refined natural gas), or 0.2 grains total sulfur per 100 scf of gas. The Agency did not intend that fuels with average sulfur content much higher than 0.2 grains per 100 scf should be allowed to use the default value. In this context, the current definition of ''natural gas'' under § 72.2, which includes the term ''20 grains of total sulfur,'' is somewhat confusing. Further, use of the 0.0006 lb/mmBtu default emission rate for ''natural gas'' with one grain of H_2S per 100 scf would result in an approximately five-fold underestimation of SO_2 emissions. Therefore, in the proposed rule, the Agency modified the definition of pipeline natural gas to include only natural gas with a hydrogen sulfide content less than or equal to 0.3 grains hydrogen sulfide per 100 scf, thereby clarifying that the default emission rate of 0.0006 lb/mmBtu could only be used for natural gas with an appropriately low hydrogen sulfide content.

The proposed rule required documentation of the hydrogen sulfide content of the natural gas either through quality characteristics specified by a purchase contract or pipeline transportation contract, through certification of the gas vendor, based on routine vendor sampling and analysis, or through at least one year's worth of analytical data on the fuel hydrogen sulfide content from samples taken at least monthly, demonstrating that all samples contain 0.3 grains or less of hydrogen sulfide per 100 standard cubic feet. For a fuel to be classified as ''pipeline natural gas'' the fuel would, of course, first have to meet the current definition of ''natural gas'' in § 72.2, which states, ''Natural gas means a naturally occurring fluid mixture of hydrocarbons (e.g., methane, ethane, or propane) containing 1 grain or less hydrogen sulfide per 100 standard cubic feet, and 20 grains or less total sulfur per 100 standard cubic feet), produced in geological formations beneath the Earth's surface, and maintaining a gaseous state at standard atmospheric temperature and pressure under ordinary conditions.''

Discussion: Several comments were received on the proposed changes to the definition of ''pipeline natural gas,'' and comments were also received on the current definition of ''natural gas.'' In responding to the comments, the Agency is revising both the definition of ''pipeline natural gas'' and ''natural gas,'' as well as making various corresponding changes to wording in part 75 to ensure consistency within the rule.

Two commenters were opposed to the change to the definition of pipeline natural gas (see Docket A–97–35, Items IV–D–23 and IV–D–24). Both commenters suggested that the requirement to document that a gaseous fuel has ≤0.3 gr/100 scf of H_2S, as opposed to the previous requirement to document an H_2S content ≤1.0 gr/100 scf, would either disqualify some sources currently using the default emission rate of 0.0006 lb/mmBtu or force those sources to use means other than the contract or tariff provisions to demonstrate that the hydrogen sulfide content of the gas is less than 0.3 gr./100 scf. Under the proposed Appendix D revisions, any sources disqualified from the use of the default SO_2 emission rate would either be required to begin daily gas sampling of the fuel sulfur content or would have to install an SO_2 CEMS.

Two other commenters suggested that the use of two sulfur content criteria in the natural gas definition (the dual criteria of 1 grain H_2S and 20 grains total sulfur per 100 scf) was confusing and could lead to misinterpretation of which fuels could be classified as either ''pipeline natural gas'' or ''natural gas'' under § 72.2 (see Docket A–97–35, Items IV–G–3 and IV–G–10). One of these commenters suggested that the definition of natural gas should be changed to incorporate only the requirement of 20 grains or less of total sulfur per 100 scf. If this suggestion were followed, a source with 20 grains total sulfur per 100 scf could use an SO_2 emission rate of 0.0006 lb/mmBtu, thereby underestimating SO_2 emissions 100-fold. This would clearly be unacceptable and contrary to the Agency's intent since the initial adoption of Appendix D.

One commenter suggested that the requirement to determine the fuel GCV on the same frequency as sulfur sampling be removed from Appendix D and that monthly GCV sampling be allowed in all cases (see Docket A–97–35, Item IV–D–20). The commenter claimed that the variability of fuel GCV is not necessarily the same as the variability of the sulfur content of a fuel.

1. Summary of EPA Analysis of Appendix D Gaseous Fuel SO_2 and Heat Input Methodologies

In responding to the comments received, the Agency first attempted to quantify the SO_2 emissions from the combustion of gaseous fuels under the current Acid Rain rules. A data analysis was performed, assuming that the vast majority of SO_2 emissions from the combustion of gaseous fuel are from affected units reporting gas as the primary fuel. The data analysis (which was limited to 1997 emission data) indicates the following: (1) there are 582 units that list gas as the primary fuel (representing about 30% of the units in the program); (2) these 582 units accounted for approximately 10% of the total heat input reported for all Acid Rain-affected units; (3) the total amount of SO_2 emitted by these 582 units was 14,728 tons in 1997 or 0.1% of the total SO_2 mass emissions in the program; and (4) of the 14,728 tons of SO_2 emitted by the 582 units, 12,844 tons were from only 17 units and the remaining 1,884 tons were from the remaining 565 units (see Docket A–97–35, Item IV–A–4). Thus it appears that gas-fired units account for a significant portion of the total heat input and electrical generation under the Acid Rain Program, but contribute only a fraction of one percent of the total SO_2 emissions. Note, however, that even though emissions from the individual gas-fired units are very small, the cumulative emissions from all 582 units are roughly equivalent to the typical SO_2 emissions from a coal-fired unit. For this reason, the method of calculating the SO_2 emissions from the gas-fired units must be sufficiently accurate to prevent significant underestimation of emissions. The methodology in the current rule allows the default SO_2 emission rate of 0.0006 lb/mmBtu to be used for all types of natural gas. As previously noted, the default emission rate corresponds to 0.2 grains of H_2S per 100 scf, but the definition of natural gas allows fuels with up to 1.0 grain of H_2S and 20 grains of total sulfur to be classified as ''natural gas.'' In view of this, it is possible that the reported cumulative SO_2 emissions reported in 1997 for the 582 gas-fired units may be inaccurate by several orders of magnitude. This level of uncertainty in reported emissions is unacceptable in an allowance trading program such as the Acid Rain Program. Consequently, a more representative method is needed to characterize the actual sulfur content of the gaseous fuels combusted by Acid Rain-affected units.

The Agency also performed an analysis of all available gaseous fuel GCV sampling data from all Acid Rain sources reporting such data in 1997. Gaseous fuels were analyzed in two categories, pipeline natural gas and ''other'' gas. Only 14 Acid Rain sources reported sampling and analysis of ''other'' gases in 1997. The data analysis showed that for 275,669 pipeline natural gas analyses, the average fuel GCV was 1023 Btu/ft^3 and the 95th

percentile value was 1051 Btu/ft^3, a difference of only 2.6%. For the ''other'' gaseous fuels, the average GCV from 14,282 analyses was 819 Btu/ft^3 and the 95th percentile value was 1118 Btu/ft^3, a difference of approximately 26%. This demonstrates the consistency of the GCV of pipeline natural gas and the high variability of the few ''other'' gaseous fuels for which Appendix D is currently being used (see Docket A–97–35, Item IV–-A–1).

In finalizing today's rule, the Agency also considered the potential impact of the revisions to Appendix D on the new Subpart H of part 75 (which establishes the requirements for monitoring of NO_X mass emissions). Currently, the provisions of Subpart H are being used by the Ozone Transport Commission (OTC) NO_X Budget Program and, in the future, Subpart H may be adopted as part of an implementation plan as a means of complying with the NO_X SIP Call (see 63 FR 57356). Subpart H of part 75 allows heat input determined by the procedures of Appendix D to be used in determining NO_X mass emissions from gas-fired units. In the process of implementing part 75 and the OTC NO_X Budget Program, the Agency has encountered an increasing number of sources that combust gaseous fuels which neither qualify as ''pipeline natural gas'' or ''natural gas.'' These fuels include refinery gas, landfill gas, digester gas, coke oven gas, process gas, propane liquified gas, liquified petroleum gas, blast furnace gas and coal-derived gas. Under the previous version of part 75 units combusting these fuels would either be required to install SO_2 and stack flow monitoring systems or would have to petition the Agency to use Appendix D. It is likely that under the OTC NO_X Budget Program and under the SIP call, the number of sources combusting these ''other'' gaseous fuels and required to monitor heat input using part 75 methods will increase significantly. The Agency anticipates that the owners or operators of the majority of these sources would petition to use the procedures of Appendix D to determine heat input used for NO_X mass calculations, in lieu of installing CEMS. However, the current Appendix D does not address how to determine hourly heat input for gaseous fuels with variable GCV. The Agency also notes that any error in hourly heat input determined under Appendix D would result in a corresponding and equal error in the reported NO_X mass emissions. It is therefore particularly important to establish consistent and easily implementable heat input monitoring criteria for all types of gaseous fuels under Appendix D. Clear, flexible and reasonable requirements for gaseous fuel GCV sampling and analysis are needed.

Based on the comments received and the data analyses described above, the Agency has concluded that:

- The use of the default SO_2 emission rate of 0.0006 lb/mmBtu is only appropriate for natural gas with a documented contractual or tariff limit of 0.3 grains hydrogen sulfide per hundred standard cubic feet or for fuels which are demonstrated to have a similar low total sulfur content.
- For natural gas with a contract or tariff hydrogen sulfide limit up to 1.0 grain of hydrogen sulfide per 100 standard cubic feet, or for fuels which are demonstrated to have a similar low total sulfur content, a site-specific default SO_2 emission rate should be allowed, which more closely represents the potential SO_2 emission rate for that fuel.
- The applicability of Appendix D should be expanded to include any gaseous fuel (rather than limiting it to fuels with a total sulfur content ≤ 20 grains per 100 scf. For gaseous fuels with highly variable sulfur content, hourly sampling using advanced monitoring such as on-line gas chromatography should be required. The frequency of determination of the GCV of a gaseous fuel should be independent of the requirements for sulfur sampling and should be based solely on the variability of the GCV.

2. Changes to the Definitions of ''Pipeline Natural Gas'' and ''Natural Gas''

As previously stated, the Agency is revising the definitions of ''pipeline natural gas'' and ''natural gas'' in § 72.2. Since the definition of ''pipeline natural gas'' necessarily includes the definition of ''natural gas'', and the definitions therefore involve similar issues, EPA is addressing both definitions in today's final rule. In particular, ''pipeline natural gas'' is defined in such a way that only fuels with the appropriate sulfur content can meet the definition and can use the default emission rate of 0.0006 lb/mmBtu. Under the revised definition, pipeline natural gas must contain less than 0.3 grains of hydrogen sulfide per 100 scf. Consistent with this approach, the definition of ''natural gas'' is revised so that only the requirement for the hydrogen sulfide content to be less than one grain per 100 scf remains, and the requirement for the total sulfur content to be ≤20 grains per 100 scf is deleted. Further, EPA is adding to both definitions a requirement that hydrogen sulfide content must account for at least 50% (by weight) of the total sulfur in the fuel. This ensures that a fuel with a high total sulfur content, but a relatively small hydrogen sulfide content, cannot qualify to use a default SO_2 emission rate. The Agency believes that in general, any ''natural gas'' with ≤1.0 grain of H_2S/100 scf will also meet the requirement that hydrogen sulfide must account for ≥50% of the total sulfur in the fuel. However, the Agency reserves the right to request that the owner or operator provide data to demonstrate compliance with this latter requirement. Finally, EPA is adding a requirement to the ''natural gas'' definition that the gas must have either a methane content of at least 70% or the same GCV as methane (950 to 1100 Btu/scf). This requirement ensures that the gas will have a stable GCV, consistent with the Appendix D provisions which allow monthly GCV sampling for either pipeline natural gas or natural gas. In today's rule, the requirements for documenting that a fuel qualifies as ''pipeline natural gas'' or ''natural gas'' are essentially the same as the proposed rule. The three principal ways of providing the necessary documentation are: (1) gas quality characteristics specified in a purchase contract or pipeline transportation contract; (2) certification by the gas vendor, based on routine sampling and analysis for at least one year; and (3) at least one year of analytical data on the fuel characteristics, derived from monthly (or more frequent) samples. In addition, sections 2.3.5 and 2.3.6 of Appendix D of today's rule allow the owner or operator to conduct a 720 hour demonstration of the fuel's sulfur and GCV characteristics (see Items 5 and 6 in this section, below).

EPA believes that the revised definitions of ''pipeline natural gas'' and ''natural gas'' will: (1) apply to the low sulfur fuel combusted by the vast majority of the sources in the Acid Rain Program; (2) be documentable, in most cases, based on contract or tariff provisions without other types of demonstrations; and (3) allow most sources currently using 0.0006 lb/mmBtu as a default to continue using that default value or to use an alternative, site-specific default value that will not underestimate SO_2 emissions.

3. Changes to the Methodology for Calculating SO_2 Emissions Under Appendix D

Today's rule adopts a two-tiered approach to the use of default SO_2 emission rates, depending on whether a fuel qualifies as ''pipeline natural gas'' or as ''natural gas.'' First, if the owner or operator can demonstrate that the fuel combusted at a unit has ≤0.3 grains of hydrogen sulfide per 100 scf, the default SO_2 emission rate of 0.0006 lb/mmBtu may be used. Second, the rule allows units combusting gaseous fuels

with >0.3 grains, but ≤1.0 grain of hydrogen sulfide per 100 scf to calculate a site-specific default SO_2 emission rate, as suggested by two of the commenters (see Docket A–97–35, Items IV–D–23 and IV–D–24). The method of calculating the default value is based on the actual conversion of hydrogen sulfide in natural gas to SO_2 and utilizes a realistic fuel GCV value of 1023 Btu/scf (from the previously-discussed data analysis, above). The result is a simple equation which converts hydrogen sulfide in natural gas to an SO_2 emission rate in lb/mmBtu.

4. Changes to the Applicability of Appendix D

In the process of considering comment on the definitions of ''pipeline natural gas'' and ''natural gas'' the Agency also re-evaluated the appropriateness of limiting the applicability of Appendix D to gaseous fuels with ≤20 grains of total sulfur per 100 scf. While EPA does not believe that a gaseous fuel with 20 or more grains of total sulfur per 100 scf should be allowed to use a default SO_2 emission rate, neither does the Agency believe that units combusting such fuel should be excluded from using Appendix D. Currently, technologies such as on-line gas chromatography allow accurate fuel sulfur analysis to be performed over intervals as short as one hour. This ability to perform hourly sampling is comparable to a CEMS in accuracy, precision and timeliness. Therefore, today's rule removes the 20 grains of sulfur per 100 scf restriction on the use of Appendix D for gaseous fuels.

5. Changes to the Method of Determining the Sulfur Content Sampling Frequency for Gaseous Fuels

Section 2.3.6 of Appendix D of today's rule also includes a general procedure for determining the appropriate frequency of sulfur content sampling for any gaseous fuel which is transmitted by a pipeline. The procedure consists of a 720 hour demonstration, similar to the one in section 2.3.3.4 of Appendix D in the proposed rule. The results of the 720 hour demonstration may first be used to determine first if a fuel qualifies as either ''pipeline natural gas'' or ''natural gas'' or as ''other'' gaseous fuel, and then to determine the appropriate total sulfur sampling frequency for the fuel. If a fuel qualifies as pipeline natural gas, the default SO_2 emission rate of 0.0006 lb/mmBtu could be used in lieu of fuel sampling. If the fuel qualifies as ''natural gas'' (but not pipeline natural gas), a site-specific default SO_2 emission rate may be used, based on the highest hourly hydrogen sulfide concentration recorded during the 720 hour demonstration. After a fuel qualifies as ''natural gas,'' the owner or operator is required to sample the H_2S content at least once monthly for a year following the 720 hour demonstration. The default emission rate for the demonstration may continue to be used, provided that none of the samples taken during the year exceeds 1.0 grain/100 scf of H_2S. All ''other'' gaseous fuels would require either daily or hourly sampling of the total sulfur content, depending on the fuel sulfur variability.

6. Changes to the Method of Determining the GCV Sampling Frequency for Gaseous Fuels

Accurate determinations of heat input are important for the calculation of SO_2, NO_X and CO_2 mass emissions under Appendices D, E, G and Subpart H of part 75. EPA has found that fuels such as refinery gas, digester gas, landfill gas, coke oven gas, process gas, propane liquified gas, liquified petroleum gas, blast furnace gas, and coal derived gas can have highly variable GCV (see Docket A–97–35, Item IV–A–4). For these fuels a standardized test for determining the appropriate GCV sampling and analysis frequency is essential. One commenter on the proposed rule noted that in many cases the GCV of a fuel is relatively stable over a period of time, and sampling each month for fuel heat content is adequate (see Docket A–97–35, Item IV–D–20). The Agency agrees that this is true in many cases (e.g., for natural gas), but not often for the fuels listed above. The Agency also notes that the emissions data determined under Appendix D must be as reliable, precise, timely and accessible as data from a CEMS.

In view of this, the Agency is revising the criteria for determining the frequency of GCV sampling for gaseous fuels. For any fuel which meets the revised definition of either ''pipeline natural gas'' or ''natural gas,'' this ensures that the fuel will have a stable heat content and therefore monthly sampling is appropriate. For fuels which do not qualify as either pipeline natural gas or natural gas and for which ''as-delivered'' fuel sampling and analysis is not performed, the same 720 hour demonstration described in item 5 in this section, above, for fuel sulfur sampling will also be used to determine the appropriate GCV sampling and analysis frequency. The heat content of the fuel will be determined for each hour in the 720 hour period. For units that switch fuels seasonally or when process changes occur (such as refinery fuel gas combustion units) the 720 hour demonstration period must also include data which characterizes the variability of the fuel during the seasonal or process changes. The results of the 720 hour demonstration will be used to determine the average heat content of the fuel and the standard deviation. As explained in section 2.3.5 of Appendix D in today's rule, depending on the results of the demonstration, the owner or operator will perform either daily or hourly sampling of the fuel GCV.

I. Electronic Transfer of Quarterly Reports

Background: For the reasons discussed in the preamble to the proposed rule revisions (63 FR 57356, May 21, 1998), EPA proposed changes to § 75.64(f) concerning the method of submitting quarterly reports. The proposal provided that all quarterly reports would have to be submitted to EPA by direct computer-to-computer electronic transfer via modem and EPA-provided software, unless otherwise approved by the Administrator. This requirement was to begin with the quarterly report for the first quarter of the year 2000.

Discussion: EPA received one comment (see Docket A–97–35, Item IV–D–20) which opposed the proposed requirement based on difficulty in receiving electronic transfer of quarterly reports due to technical difficulties with EPA computers which may arise due to year 2000 conversion difficulties or other technical problems relative to electronic transfer of quarterly reports at times when EPA computers may not be accessible. Concern was expressed regarding the requirement for utilities to provide proof that they attempted to transfer their reports on time but were unsuccessful due to the inability to gain access to the EPA computer system.

Based on the comment received, EPA has decided to change the electronic reporting requirement in § 75.64(f) so that beginning with the quarterly report for the first quarter of the year 2001, all quarterly reports must be submitted to EPA by direct computer-to-computer electronic transfer via modem and EPA-provided software, unless otherwise approved by the Administrator. This will ensure adequate time for all parties to address the year 2000 concerns. EPA notes that its system has already undergone testing and changes to accommodate year 2000 concerns.

J. Bias, Relative Accuracy and Availability Determinations

Background: The preamble to the proposed rule described the findings of studies performed to evaluate the

provisions for the bias test, relative accuracy, and monitor availability trigger conditions as required by §§ 75.7 and 75.8. Issues concerning the bias relative accuracy, and monitor availability provisions in the core Acid Rain rules had been raised in litigation (*Environmental Defense Fund* v. *Carol M. Browner,* No. 93–120; *et al.* D.C. Cir., 1993). The purpose of these studies was to address these issues (see 63 FR 28197). The preamble of the proposed rule explained how these findings led to the Agency's proposed determinations to retain the current rule provisions concerning these matters. There were no comments objecting to the substance of the proposed determinations. Therefore, for the reasons set forth in the preamble to the proposed rule, EPA is adopting the proposed rule revisions as final, with the result that §§ 75.7 and 75.8 are removed and reserved. Moreover, since none of the issues raised concerning the bias, relative accuracy, and monitor availability provisions in the core Acid Rain rules were raised in any comments on the studies, EPA maintains that those litigation issues have been resolved.

Discussion: Two comments were received. One (see Docket A–97–56, Item IV–D–01) supported the proposed determinations. The second comment (see Docket A–97–56, Item IV–D–02) expressed concern that the bias test studies performed in response to § 75.7 did not evaluate overestimation in flow measurements. The commenter urged EPA to complete its ongoing work as quickly as possible on a separate rulemaking to resolve the commenter's flow overestimation concerns. The Agency is pursuing the separate rulemaking recommended by the commenter.

K. Appendix I—Proposed Optional Stack Flow Monitoring Methodology

Background: EPA proposed to add an F-factor/fuel flow method in Appendix I to part 75 as an excepted method to measure volumetric flow directly with a flow monitor. The Agency proposed this method based on information provided by affected utilities, and based on the assumption that the new excepted method would be used by a significant number of units as a cost-effective option to a volumetric flow monitor. This method would allow fuel flow measurement with a gas or oil flowmeter, fuel sampling data, CO_2 (or O_2) CEMS data, and F-factors to determine the flow rate of the stack gas rather than a volumetric flow monitor. The F-factor/fuel flow method would be available for use by oil-fired and gas-fired units, as defined under § 72.2, provided that they only burn natural gas and/or fuel oil. For these units, EPA believes that the proposed method would provide acceptably accurate measurements of volumetric flow. However, adoption of the proposed method would require the Agency to develop regulations imposing additional reporting and recordkeeping requirements for those units that used this option. This would also place a burden on software vendors to develop software to allow for electronic data reporting of the required data elements.

Discussion: A few commenters stated generally that they supported the Appendix I option, while two other commenters stated generally that the method should be allowed for other types of units or simplified (see Docket A–97–56, Items IV–D–9, 23, and 24, and IV–G–2 and –8). However, utilities have submitted late comments that suggest that the utilities (including those originally interested in an F-factor/fuel flow method) are in fact unlikely to use the Appendix I option at this time (see Docket A–97–56, Item IV–G–13). Based on a review of Acid Rain program databases, only about 150 units affected by the Acid Rain Program could potentially take advantage of this option. In contrast, there are a significant number of units that implement the other generally available excepted methods under Appendices D and E to Part 75 (currently, approximately 540 different units report using one or both of these methods).

As discussed above there would be substantial effort involved for EPA, utilities and software vendors to implement a new generally available option such as proposed Appendix I. As discussed in the preamble to the proposed rule, the annual savings on a per unit basis for Appendix I units are at most $10–15,000 over the measurement of volumetric flow directly with a flow monitor. The actual cost savings would be less because other provisions of today's rule revise flow monitor quality assurance requirements and significantly reduce the costs of using a flow monitor. Given the relatively small amount of savings on a per unit basis, the indication that no units would use the option at this time, and the significant burden on all interested parties in implementing a generally available option in Appendix I, the Agency has determined not to adopt Appendix I.

However, if the owner or operator of a unit decides at some time in the future to use this type of procedure for measuring flow, the designated representative of the unit may petition the Agency under § 75.66 to use this type of procedure on a case-by-case basis. In such a petition, the designated representative can reference the information used to support the proposed Appendix I procedure (see 63 FR 28113–28115, May 21, 1998, for further details on the information used to develop proposed Appendix I). The Agency will evaluate the petition on the merits at that time.

L. Subpart H—Clarifications to NO_X Mass Monitoring Requirements

Background: By notice of proposed rulemaking (NPR, proposal, or ''proposed SIP call'') (62 FR 60318, November 7, 1997) and by supplemental notice (SNPR or supplemental proposal) (63 FR 25902, May 11, 1998), EPA proposed to find that NO_X emissions from sources in 22 states and the District of Columbia, will significantly contribute to nonattainment of the 1-hour and 8-hour ozone National Ambient Air Quality Standards (NAAQS), or will interfere with maintenance of the 8-hour NAAQS, in one or more downwind states throughout the eastern United States.

In October, 1998 (63 FR 57356, October 27, 1998), EPA finalized the proposed SIP call rulemaking. The final rule specified dates by which: (1) the affected states must submit State Implementation Plan revisions to reduce NO_X emissions to eliminate the amounts of NO_X emissions that contribute significantly to nonattainment, or that interfere with maintenance, downwind; and (2) the affected sources must implement the measures chosen by the states to achieve the required NO_X emission reductions.

The provisions of the October 27, 1998 final rule allow each state to determine the best way to achieve the necessary NO_X emission reductions. Consistent with the Ozone Transport Assessment Group's recommendation to achieve NO_X emissions decreases primarily from large stationary sources in a trading program, EPA promulgated a model rule for the implementation of such a trading program as 40 CFR part 96 (''Part 96'') in the October 27, 1998 rulemaking.

If the states should choose to create a NO_X mass trading program and to adopt the provisions of the Part 96 model rule, § 96.70 requires the monitoring and reporting of NO_X mass emissions to be done in accordance with either: (1) Subpart H of 40 CFR part 75, the Acid Rain CEM Rule (''Part 75''); or (2) for qualifying low mass-emission units, § 75.19 of Part 75. However, even if a state should choose not to participate in such a trading program, the October 27, 1998 rule still requires the monitoring provisions of Subpart H to be used by

a core group of sources (large industrial boilers and turbines, and large boilers and turbines used for the generation of electricity for sale) if the NO_X mass emission reduction program for that state includes requirements to control such sources. To support these NO_X mass emission reduction programs and rulemakings, EPA promulgated both Subpart H of Part 75 and the low mass emission unit provisions in § 75.19 of Part 75 as part of the October 27, 1998 rulemaking.

In the November 7, 1997 proposed SIP Call rule, EPA would have required the affected units in a Federal or state NO_X mass emission reduction program to report NO_X emissions on a year-round basis and also to quality assure the NO_X emission data in accordance with the provisions of Part 75 on a year-round basis. However, in response to comments on the proposed rule, EPA modified Subpart H of Part 75 so that states could choose to allow sources that were not subject to the requirements of Title IV of the Clean Air Act (the Acid Rain Program) to monitor and report either on a year round basis or on an ozone season only basis. Therefore, the October 27, 1998 final rule provides for the monitoring and reporting of NO_X mass emissions either on an annual basis or during the ozone season, when this is allowed by the governing state or Federal rule.

If a state or Federal NO_X mass emission reduction program were to allow ''ozone season only'' monitoring and reporting, there would be an issue related to data quality at the start of each ozone season. To address this issue, in the October 27, 1998 final rule, EPA included a provision in § 75.74(c) of Subpart H, which requires the continuous emission monitoring systems used to provide the NO_X mass emission data to be recertified prior to the start of each ozone season.

Although Subpart H was proposed on May 21, 1998 as part of the Acid Rain CEM Rule revisions, it was finalized several months ahead of today's rulemaking, in order to support the SIP call. In the preamble to the October 27, 1998 final rule (63 FR 57467), EPA explained its intention to, where possible, make the provisions of Subpart H consistent with any other changes that EPA promulgated as a result of the May 21, 1998 proposed revisions to Part 75. EPA has re-examined the provisions of Subpart H within the context of today's final rulemaking. The Agency has found that a few minor clarifications of the regulatory language in Subpart H and the addition of one new paragraph are needed for consistency with today's final rule. The textual clarifications affect §§ 75.70(f)(1)(iv), 75.71(b) and 75.71(d)(2). The new paragraph is found at § 75.70(g)(6). In addition to these minor corrections, EPA has found that certain provisions in § 75.74(c), pertaining to sources that monitor and report data only in the ozone season, are substantially inconsistent with sections of today's final rule (particularly the new CEM data validation provisions). The Agency has also found an instance in which the text of § 75.74(c) is internally inconsistent and a second instance in which a statement in the October 27, 1998 preamble does not agree with the regulatory language in § 75.74(c). In view of these considerations, today's rulemaking revises § 75.74(c), in order to make Subpart H more consistent with the rest of Part 75 and to resolve the apparent discrepancies and inconsistencies in the text of § 75.74(c).

Discussion of Changes: As previously stated, Subpart H requires owners or operators of sources that monitor and report only during the ozone season to recertify their CEM systems prior to each ozone season. EPA put this requirement in Subpart H because the Agency believes that for sources which are not required to monitor and report on a year-round basis, substantial quality assurance testing of the CEMS prior to the ozone season is essential to validate the emission data at the beginning of the ozone season. However, in the light of today's rulemaking, the use of the word ''recertification'' in § 75.74(c) of Subpart H is regarded as inaccurate and inappropriate and does not properly communicate the Agency's intent. In § 75.20(b) of today's final rule, the term ''recertification'' has been carefully defined, so that it is limited to major changes to a CEMS which may affect its ability to accurately measure emissions. Since in most instances sources will be testing existing CEMS that have not undergone major changes, EPA believes that this is more consistent with either diagnostic testing or on-going quality assurance testing rather than recertification. Therefore, in today's final rule, all of the references in § 75.74 to ''recertification testing'' of CEMS prior to the ozone season have been replaced with terms such as ''diagnostic testing'' or ''quality assurance testing,'' which properly convey the Agency's intent and de-couple this testing from the formal administrative process associated with recertification events. Since the required pre-ozone season testing is considered to be quality assurance (QA) or diagnostic testing rather than a recertification, the Agency must specify which QA tests are to be performed. Section 75.74(c) therefore lists the specific quality assurance tests that are required prior to the ozone season. For all CEM systems, a relative accuracy test audit (RATA) is required and for all gas monitors, a linearity check is also required. After a required linearity check or RATA is passed, § 75.74(c) requires that daily calibration error tests and (if applicable) flow monitor interference checks begin to be performed. These daily assessments must then continue to be performed until the end of the ozone season.

Section 75.74(c)(5) of Subpart H, as promulgated on October 27, 1998, requires both the recording and reporting of hourly emission data prior to the current ozone season in the time interval from the date and hour that ''recertification'' testing of the CEM systems is completed through the end of the ozone season. EPA believes that most sources that choose this option would do the testing as close to the ozone season as possible. However, there may be some instances in which it would be difficult for a source to perform all of the testing in the second quarter before the beginning of the ozone season. This means that some sources for which the NO_X emission data count for compliance only during the ozone season would be required to submit additional electronic quarterly reports outside the ozone season, if they completed the pre-ozone season testing in the first or fourth calendar quarter. In view of this, EPA has reconsidered the implications of this extra reporting requirement and has concluded that it will complicate program implementation. The Agency believes that this complication is unnecessary. Therefore, in § 75.74(c)(6) of today's final rule, the Subpart H reporting provision for these sources has been revised, so that only reporting of emission data in the ozone season, from May 1 through September 30, is required. This means that in the time period from the date and hour of completion of the required pre-ozone season quality assurance testing of the CEM systems through April 30 of the current year, the owner or operator is only required to record and keep records of the hourly emission data on-site. The only pre-ozone season data that must be reported are the results of daily calibration error checks and flow monitor interference checks performed in the time period from April 1 through April 30 and the results of any linearity checks, RATAs, fuel flow meter tests and fuel sampling performed outside of the ozone season for purposes of

compliance with Subpart H. This will provide the regulatory agencies with added assurance that the CEMS data are quality-assured at the start of the ozone season and will enable the agencies to have a limited pre-ozone season electronic auditing capability. The requirement to report the results of the daily assessments for the month of April is not considered burdensome because April is in the second calendar quarter, which is one of the two reporting quarters for the affected sources. In fact, some affected sources may prefer to report data for April, because it may be easier to generate an electronic quarterly report for the entire second calendar quarter, rather than just for the months of May and June. Therefore, § 75.74(c)(6) of today's final rule gives the owner or operator the option to report unit operating data and emission data for the month of April.

In reviewing the missing data provisions of Subpart H, EPA found a discrepancy between the Agency's stated intent in the preamble to the October 27, 1998 final rule and the regulatory language in § 75.74(c)(6)(i). The preamble states that ''[h]istorical lookback periods for missing data only need to include data from the ozone season'' (63 FR 57483, October 27, 1998). However, the rule language in § 75.74(c)(6)(i) does not state this explicitly, and could be misinterpreted. The rule language states that all ''quality assured data, in accordance with paragraph (c)(2) or (c)(3) of this section'' are to be used for missing data purposes. This could be interpreted as meaning that the data recorded outside the ozone season, in the time period between completion of the pre-ozone season quality assurance testing of the CEM systems and May 1, are to be included in the missing data lookback periods. This is not what EPA intends; rather, the statement cited above from the October 27, 1998 preamble accurately reflects the Agency's position. Therefore, § 75.74(c)(7) of today's rule clearly states that for purposes of missing data substitution, only data recorded during the ozone season will be used for the historical missing data lookback periods.

Finally, EPA has examined the quality assurance provisions of Subpart H in view of the many substantial changes to the quality assurance and data validation provisions of Part 75 in today's rulemaking. The Agency has concluded that, in light of the many changes that have been made to Part 75, the general references in Subpart H to the quality assurance provisions in § 75.21 and appendix B to Part 75 and references to the data validation procedures in § 75.20 could be clarified to make the requirements easier to understand, particularly for sources that report data only during the ozone season. There are several reasons for this.

First, sections 2.2.4 and 2.3.3 in appendix B of today's final rule provide ''grace periods'' in which late or missed QA tests can be completed. For linearity checks, the grace period is 168 unit operating hours after the end of the quarter in which the test is due. For RATAs, the grace period is 720 unit operating hours after the end of the quarter in which the RATA is due. Because the grace periods in Part 75 are in terms of unit operating hours, they can sometimes extend for more than one calendar quarter beyond the quarter in which the QA test was due (particularly for infrequently-operated or seasonally-operated units). Consequently, the Part 75 grace period provisions in appendix B are considered to be inappropriate for sources that report emissions data only during the ozone season. Without a complete record of unit operation for each year, the regulatory agency will be unable to determine whether the required QA tests have been completed within the allotted grace period.

Second, § 75.20(b)(3) of today's final rule provides ''conditional'' data validation procedures for CEMS recertifications. These provisions allow a probationary period following a recertification event, during which data from a CEMS are assigned a ''conditionally valid'' status. Provided that all recertification tests are passed within the probationary period, with no test failures, § 75.20(b)(3) allows the conditionally valid data to be reported as quality-assured. Today's rule also allows these data validation procedures to be used for routine linearity checks and RATAs, in cases where significant repair, adjustment or reprogramming of the CEMS is done prior to the QA test. The maximum allowable length of the probationary period is 168 unit operating hours for a linearity check and 720 unit operating hours for a RATA. Once again, because these probationary periods are in terms of unit operating hours, they can extend outside the current calendar quarter, into the next quarter and possibly beyond the next quarter. Therefore, for sources that report only during the ozone season, some restrictions must be placed on the use of the conditional data validation procedures in § 75.20(b)(3).

In view of the above considerations, EPA has revised Subpart H to make it clear which of the Part 75 QA and data validation provisions are applicable to sources that report only in the ozone season and which provisions are inapplicable. The Agency has replaced the general references in Subpart H to the quality assurance provisions of § 75.21 and appendix B and the references to the provisions of § 75.20 with specific language that delineates the exact QA tests required during each ozone season. Section 75.74(c)(3) of today's rule also contains specific data validation provisions for sources that report only during the ozone season. To the extent possible, these QA and data validation provisions have been made the same as or similar to the requirements for sources that report data on a year-round basis. However, as necessary, special provisions have been added to § 75.74(c) to address the differences between year-round reporters and sources that report only during the ozone season. EPA believes that these revisions to Subpart H will help to achieve consistency in the implementation of state and Federal NO_X mass emission reduction programs and will help to ensure the quality of the reported data.

IV. Administrative Requirements

A. Public Docket

EPA has established Docket A–97–35 for the regulations. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of today's final rule. The principal purposes of the docket are: (1) to allow interested parties a means to identify and locate documents so that they can effectively participate in the rulemaking process; and (2) to serve as the record in case of judicial review. The docket is available for public inspection at EPA's Air Docket, which is listed under the **ADDRESSES** section of this notice.

B. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Administrator must determine whether the regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that 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.

This rule is not expected to have an annual effect on the economy of $100 million or more.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a ''significant regulatory action'' due to its policy implications. Therefore, the rule was submitted to OMB for review. Any written comments from OMB and any EPA response to those comments are included in the public docket for this proposal. The docket is available for public inspection at EPA's Air Docket Section, which is listed in the **ADDRESSES** portion of this preamble.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to state, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Section 205 of the UMRA generally requires that, before promulgating rules for which a written statement is needed, EPA must identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

This rule is not expected to result in expenditures of more than $100 million in any one year and therefore is not subject to section 202 of the UMRA. Although the rule is not expected to significantly or uniquely affect small governments, the Agency notified all potentially affected small governments that own or operate units potentially affected by the rule in order to assure that they had the opportunity to have meaningful and timely input on the rule. EPA will continue to use its outreach efforts related to part 75 implementation, including a policy manual that is generally updated on a quarterly basis, to inform, educate, and advise all potentially impacted small governments about compliance with part 75.

EPA is not directly establishing any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments. Thus, EPA is not obligated to develop under section 203 of the UMRA a small government agency plan.

D. Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies 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.''

EPA has concluded that this rule will create a mandate on local and tribal governments and that the Federal government will not provide the funds necessary to pay the direct costs incurred by the local and tribal governments in complying with the mandate. In developing this rule, EPA consulted with local and tribal governments to enable them to provide meaningful and timely input in the development of this rule. Only local or tribal governments that own sources affected by Acid Rain would be affected by this rulemaking. The governments that own an Acid Rain affected source were contacted when the proposed rule was signed and informed of their right to comment on the proposal. EPA received a few comment letters from municipal utilities; these letters contained support for many elements of the rule, as well as concerns with certain provisions. The Agency has attempted to include changes to the proposed rule revisions based on these and other comments wherever possible consistent with the purpose and intent of the rule revisions, and to the extent justified by the commenters. See section III of this preamble and the response to comments document included in the docket for this rulemaking for the Agency's responses to the specific comments raised. EPA also notes generally that these sources already have to comply with part 75. Today's rule adds more compliance flexibility and may reduce the compliance costs for some of the sources owned by local and tribal governments.

E. Executive Order 13084

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

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Only tribal governments that own sources affected by the Acid Rain Program are affected by this rulemaking. As noted above in section IV.D. of this preamble, today's rule adds compliance flexibility and may reduce compliance costs for any tribal governments that own or operate affected sources. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

F. Paperwork Reduction Act

The information collection requirements in this rule have been submitted for approval to the OMB under the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1633.12), and a copy may be obtained from Sandy Farmer, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M Street, SW, Washington, DC 20460, by calling (202) 260–2740, or via the Internet at www.epa.gov/icr. The information requirements are not effective until OMB approves them.

Currently, all affected facilities are required to keep records and submit electronic quarterly reports under the provisions of part 75. The revisions to the rule include several new options for compliance with part 75 which have been requested by owners or operators of affected facilities. To implement these options, EPA will have to modify the existing recordkeeping and reporting requirements. In some circumstances, these changes will result in significant reductions in the reporting and recordkeeping burdens or costs for some units (such as low mass emissions units). However, these changes will require modifications to the software used to generate electronic reports. In addition, there will be some increased burden or costs for certain units to fulfill the new quality assurance procedures contained in this rule. Finally, several other technical revisions to the existing reporting and recordkeeping requirements have been adopted to clarify existing provisions or to facilitate reporting for other regulatory programs in the context of Acid Rain Program reporting. Although these one-time software changes will increase the short-term burdens on sources under the Acid Rain Program, the changes should reduce a source's overall long-term burden by streamlining the source's reporting obligations under both the Acid Rain Program and other parts of the Act.

The average annual projected hour burden is 1,225,633, which is based on an estimated average burden of approximately 421 hours per response, quarterly reporting frequency, and an estimated 728 likely respondents (on a per facility basis). The projected annual cost burden resulting from the collection of information is $192,483,642, which includes a total projected capital and start-up average annualized cost of $92,131,857 (for monitoring equipment/software), total projected fuel sampling and analysis average annual cost of $581,100, and a total projected operation and maintenance average annual cost (which includes purchase of testing contractor services) of $41,398,000. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose, or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

G. Regulatory Flexibility

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601, *et seq.*, generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and governmental jurisdictions. This rule will not have a significant impact on a substantial number of small entities.

Today's revisions to part 75 result in a net cost reduction to facilities affected by the Acid Rain Program, including small entities. Most importantly, the changes to Appendix D will significantly reduce the cost of complying with part 75 for oil-and gas-fired units, many of which are owned or operated by small entities.

Accordingly, considering all of the above information, EPA concludes that this rule will not have a significant economic impact on a substantial number of small entities.

H. Submission to Congress and the General Accounting Office

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

I. Executive Order 13045

This final rule 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.

J. National Technology Transfer and Advancement Act

Section 12(d) of National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Pub L. 104–113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standards bodies. The NTTAA requires EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

Part 75 already incorporates a number of voluntary consensus standards. In addition, today's rule includes incorporation on two voluntary consensus standards, in response to comments submitted on the proposed part 75 rulemaking. First, ASTM D5373–93 ''Standard Methods for

Instrumental Determination of Carbon, Hydrogen and Nitrogen in laboratory samples of Coal and Coke.'' This standard is incorporated by reference for use under section 2.1 of Appendix G to part 75. Second, API Sections 2, 3 and 5 from Chapter 4 of the Manual of Petroleum Standards, October 1988 edition. This standard is incorporated by reference for use under section 2.1.5.1 of Appendix D to part 75.

Consistent with the Agency's Performance Based Measurement System, part 75 sets forth performance criteria that allow the use of alternative methods to the ones set forth in part 75. The PBMS approach is intended to be more flexible and cost effective for the regulated community; it is also intended to encourage innovation in analytical technology and improved data quality. The EPA is not precluding the use of any method, whether it constitutes a voluntary consensus standard or not, as long as it meets the performance criteria specified, however any alternative methods must be approved in advance before they may be used under part 75.

List of Subjects

40 CFR Part 72

Environmental protection, Acid rain, Air pollution control, Electric utilities, Nitrogen oxides, Sulfur oxides.

40 CFR Part 75

Environmental protection, Air pollution control, Carbon dioxide, Continuous emission monitoring, Electric utilities, Incorporation by reference, Nitrogen oxides, Reporting and recordkeeping, Sulfur dioxide.

Dated: April 1, 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 72—PERMITS REGULATION

1. The authority for part 72 continues to read as follows:

Authority: 42 U.S.C. 7601 and 7651, *et seq.*

2. Section 72.2 is amended by correcting the definition of ''diesel fuel;'' by revising the definitions of ''calibration gas,'' ''coal-fired'' (introductory text only), ''gas-fired,'' ''natural gas,'' ''pipeline natural gas,'' ''span,'' ''stationary gas turbine,'' and ''zero air material;'' by adding, in alphabetical order, new definitions for ''conditionally valid data,'' ''EPA protocol gas,'' ''fuel flowmeter QA operating quarter,'' ''gas manufacturer's intermediate standard,'' ''probationary calibration error test,'' ''QA operating quarter,'' ''research gas mixture'' ''stack operating hour,'' ''standard reference material-equivalent compressed gas primary reference material (SRM-equivalent PRM),'' and ''very low sulfur fuel;'' by revising paragraphs (1) introductory text, (1)(ii) and (2) of the definition of ''oil-fired'' and paragraph (2) of the definition of ''peaking unit;'' by adding a paragraph (3) to the definition of ''peaking unit;'' and by removing the definition of ''protocol 1 gas'' and to read as follows:

§ 72.2 Definitions.

* * * * *

Calibration gas means:

(1) A standard reference material;

(2) A standard reference material-equivalent compressed gas primary reference material;

(3) A NIST traceable reference material;

(4) NIST/EPA-approved certified reference materials;

(5) A gas manufacturer's intermediate standard;

(6) An EPA protocol gas;

(7) Zero air material; or

(8) A research gas mixture.

* * * * *

Coal-fired means the combustion of fuel consisting of coal or any coal-derived fuel (except a coal-derived gaseous fuel that meets the definition of ''very low sulfur fuel'' in this section), alone or in combination with any other fuel, where:

* * * * *

Conditionally valid data means data from a continuous monitoring system that are not quality assured, but which may become quality assured if certain conditions are met. Examples of data that may qualify as conditionally valid are: data recorded by an uncertified monitoring system prior to its initial certification; or data recorded by a certified monitoring system following a significant change to the system that may affect its ability to accurately measure and record emissions. A monitoring system must pass a probationary calibration error test, in accordance with section 2.1.1 of appendix B to part 75 of this chapter, to initiate the conditionally valid data status. In order for conditionally valid emission data to become quality assured, one or more quality assurance tests or diagnostic tests must be passed within a specified time period in accordance with § 75.20(b)(3).

* * * * *

Diesel fuel means a low sulfur fuel oil of grades 1–D or 2–D, as defined by the American Society for Testing and Materials standard ASTM D975–91, ''Standard Specification for Diesel Fuel Oils,'' grades 1–GT or 2–GT, as defined by ASTM D2880–90a, ''Standard Specification for Gas Turbine Fuel Oils,'' or grades 1 or 2, as defined by ASTM D396–90a, ''Standard Specification for Fuel Oils'' (incorporated by reference in § 72.13).

* * * * *

EPA protocol gas means a calibration gas mixture prepared and analyzed according to section 2 of the ''EPA Traceability Protocol for Assay and Certification of Gaseous Calibration Standards,'' September 1997, EPA–600/R–97/121 or such revised procedure as approved by the Administrator.

* * * * *

Fuel flowmeter QA operating quarter means a unit operating quarter in which the unit combusts the fuel measured by the fuel flowmeter for at least 168 unit operating hours (as defined in this section) or more.

* * * * *

Gas-fired means:

(1) For all purposes under the Acid Rain Program, except for part 75 of this chapter, the combustion of:

(i) Natural gas or other gaseous fuel (including coal-derived gaseous fuel), for at least 90.0 percent of the unit's average annual heat input during the previous three calendar years and for at least 85.0 percent of the annual heat input in each of those calendar years; and

(ii) Any fuel, except coal or solid or liquid coal-derived fuel, for the remaining heat input, if any.

(2) For purposes of part 75 of this chapter, the combustion of:

(i) Natural gas or other gaseous fuel (including coal-derived gaseous fuel) for at least 90.0 percent of the unit's average annual heat input during the previous three calendar years and for at least 85.0 percent of the annual heat input in each of those calendar years; and

(ii) Fuel oil, for the remaining heat input, if any.

(3) For purposes of part 75 of this chapter, a unit may initially qualify as gas-fired if the designated representative demonstrates to the satisfaction of the Administrator that the requirements of paragraph (2) of this definition are met, or will in the future be met, through one of the following submissions:

(i) For a unit for which a monitoring plan has not been submitted under § 75.62 of this chapter, the designated representative submits either:

(A) Fuel usage data for the unit for the three calendar years immediately preceding the date of initial submission of the monitoring plan for the unit under § 75.62; or

(B) If a unit does not have fuel usage data for one or more of the three calendar years immediately preceding the date of initial submission of the monitoring plan for the unit under § 75.62, the unit's designated fuel usage; all available fuel usage data (including the percentage of the unit's heat input derived from the combustion of gaseous fuels), beginning with the date on which the unit commenced commercial operation; and the unit's projected fuel usage.

(ii) For a unit for which a monitoring plan has already been submitted under § 75.62, that has not qualified as gas-fired under paragraph (3)(i) of this definition, and whose fuel usage changes, the designated representative submits either:

(A) Three calendar years of data following the change in the unit's fuel usage, showing that no less than 90.0 percent of the unit's average annual heat input during the previous three calendar years, and no less than 85.0 percent of the unit's annual heat input during any one of the previous three calendar years, is from the combustion of gaseous fuels and the remaining heat input is from the combustion of fuel oil; or

(B) A minimum of 720 hours of unit operating data following the change in the unit's fuel usage, showing that no less than 90.0 percent of the unit's heat input is from the combustion of gaseous fuels and the remaining heat input is from the combustion of fuel oil, and a statement that this changed pattern of fuel usage is considered permanent and is projected to continue for the foreseeable future.

(iii) If a unit qualifies as gas-fired under paragraph (3)(i) or (ii) of this definition, the unit is classified as gas-fired as of the date of the submission under such paragraph.

(4) For purposes of part 75 of this chapter, a unit that initially qualifies as gas-fired under paragraph (3)(i) or (ii) of this definition must meet the criteria in paragraph (2) of this definition each year in order to continue to qualify as gas-fired. If such a unit combusts only gaseous fuel and fuel oil but fails to meet such criteria for a given year, the unit no longer qualifies as gas-fired starting January 1 of the year after the first year for which the criteria are not met. If such a unit combusts fuel other than gaseous fuel or fuel oil and fails to meet such criteria in a given year, the unit no longer qualifies as gas-fired starting the day after the first day for which the criteria are not met. If a unit failing to meet the criteria in paragraph (2) of this definition initially qualified as a gas-fired unit under paragraph (3) of this definition, the unit may qualify as a gas-fired unit for a subsequent year only if the designated representative submits the data specified in paragraph (3)(ii)(A) of this definition.

* * * * *

Gas manufacturer's intermediate standard (GMIS) means a compressed gas calibration standard that has been assayed and certified by direct comparison to a standard reference material (SRM), an SRM-equivalent PRM, a NIST/EPA-approved certified reference material (CRM), or a NIST traceable reference material (NTRM), in accordance with section 2.1.2.1 of the ''EPA Traceability Protocol for Assay and Certification of Gaseous Calibration Standards,'' September 1997, EPA–600/R–97/121.

* * * * *

Natural gas means a naturally occurring fluid mixture of hydrocarbons (e.g., methane, ethane, or propane) produced in geological formations beneath the Earth's surface that maintains a gaseous state at standard atmospheric temperature and pressure under ordinary conditions. Natural gas contains 1.0 grain or less of hydrogen sulfide per 100 standard cubic feet and the hydrogen sulfide constitutes more than 50% (by weight) of the total sulfur in the gas fuel. Additionally, natural gas must meet either be composed of at least 70% methane by volume or have a gross calorific value between 950 and 1100 Btu per standard cubic foot. Natural gas does not include the following gaseous fuels: landfill gas, digester gas, refinery gas, sour gas, blast furnace gas, coal-derived gas, producer gas, coke oven gas, or any gaseous fuel produced in a process which might result in highly variable sulfur content or heating value.

* * * * *

Oil-fired means:

(1) For all purposes under the Acid Rain Program, except part 75 of this chapter, the combustion of:

(i) * * *

(ii) Any solid, liquid or gaseous fuel (including coal-derived gaseous fuel), other than coal or any other coal-derived solid or liquid fuel, for the remaining heat input, if any.

(2) For purposes of part 75 of this chapter, combustion of only fuel oil and gaseous fuels, provided that the unit involved does not meet the definition of gas-fired.

* * * * *

Peaking unit means:

* * * * *

(2) For purposes of part 75 of this chapter, a unit may initially qualify as a peaking unit if the designated representative demonstrates to the satisfaction of the Administrator that the requirements of paragraph (1) of this definition are met, or will in the future be met, through one of the following submissions:

(i) For a unit for which a monitoring plan has not been submitted under § 75.62, the designated representative submits either:

(A) Capacity factor data for the unit for the three calendar years immediately preceding the date of initial submission of the monitoring plan for the unit under § 75.62; or

(B) If a unit does not have capacity factor data for one or more of the three calendar years immediately preceding the date of initial submission of the monitoring plan for the unit under § 75.62, all available capacity factor data, beginning with the date on which the unit commenced commercial operation; and projected capacity factor data.

(ii) For a unit for which a monitoring plan has already been submitted under § 75.62, that has not qualified as a peaking unit under paragraph (2)(i) of this definition, and where capacity factor changes, the designated representative submits either:

(A) Three calendar years of data following the change in the unit's capacity factor showing an average capacity factor of no more than 10.0 percent during the three previous calendar years and a capacity factor of no more than 20.0 percent in each of those calendar years; or

(B) One calendar year of data following the change in the unit's capacity factor showing a capacity factor of no more than 10.0 percent and a statement that this changed pattern of operation resulting in a capacity factor less than 10.0 percent is considered permanent and is projected to continue for the foreseeable future.

(3) For purposes of part 75 of this chapter, a unit that initially qualifies as a peaking unit must meet the criteria in paragraph (1) of this definition each year in order to continue to qualify as a peaking unit. If such a unit fails to meet such criteria for a given year, the unit no longer qualifies as a peaking unit starting January 1 of the year after the year for which the criteria are not met. If a unit failing to meet the criteria in paragraph (1) of this definition initially qualified as a peaking unit under paragraph (2) of this definition, the unit may qualify as a peaking unit for a subsequent year only if the designated representative submits the data specified in paragraph (2)(ii)(A) of this definition.

* * * * *

Pipeline natural gas means natural gas, as defined in this section, that is

provided by a supplier through a pipeline and that contains 0.3 grains or less of hydrogen sulfide per 100 standard cubic feet and the hydrogen sulfide in content of the gas constitutes at least 50% (by weight) of the total sulfur in the fuel;

* * * * *

Probationary calibration error test means an on-line calibration error test performed in accordance with section 2.1.1 of appendix B to part 75 of this chapter that is used to initiate a conditionally valid data period.

* * * * *

QA operating quarter means a calendar quarter in which there are at least 168 unit operating hours (as defined in this section) or, for a common stack or bypass stack, a calendar quarter in which there are at least 168 stack operating hours (as defined in this section).

* * * * *

Research gas mixture (RGM) means a calibration gas mixture developed by agreement of a requestor and NIST that NIST analyzes and certifies as ''NIST traceable.'' RGMs may have concentrations different from those of standard reference materials.

* * * * *

Span means the highest pollutant or diluent concentration or flow rate that a monitor component is required to be capable of measuring under part 75 of this chapter.

* * * * *

Stack operating hour means any hour (or fraction of an hour) during which flue gases flow through a common stack or bypass stack.

* * * * *

Standard reference material-equivalent compressed gas primary reference material (SRM-equivalent PRM) means those gas mixtures listed in a declaration of equivalence in accordance with section 2.1.2 of the ''EPA Traceability Protocol for Assay and Certification of Gaseous Calibration Standards,'' September 1997, EPA–600/R–97/121.

* * * * *

Stationary gas turbine means a turbine that is not self-propelled and that combusts natural gas, other gaseous fuel with a total sulfur content no greater than the total sulfur content of natural gas, or fuel oil in order to heat inlet combustion air and thereby turn a turbine in addition to or instead of producing steam or heating water.

* * * * *

Very low sulfur fuel means either:

(1) A fuel with a total sulfur content no greater than 0.05 percent sulfur by weight;

(2) Natural gas or pipeline natural gas, as defined in this section; or

(3) Any gaseous fuel with a total sulfur content no greater than 20 grains of sulfur per 100 standard cubic feet.

* * * * *

Zero air material means either:

(1) A calibration gas certified by the gas vendor not to contain concentrations of SO_2, NO_X, or total hydrocarbons above 0.1 parts per million (ppm), a concentration of CO above 1 ppm, or a concentration of CO_2 above 400 ppm;

(2) Ambient air conditioned and purified by a CEMS for which the CEMS manufacturer or vendor certifies that the particular CEMS model produces conditioned gas that does not contain concentrations of SO_2, NO_X, or total hydrocarbons above 0.1 ppm, a concentration of CO above 1 ppm, or a concentration of CO_2 above 400 ppm;

(3) For dilution-type CEMS, conditioned and purified ambient air provided by a conditioning system concurrently supplying dilution air to the CEMS; or

(4) A multicomponent mixture certified by the supplier of the mixture that the concentration of the component being zeroed is less than or equal to the applicable concentration specified in paragraph (1) of this definition, and that the mixture's other components do not interfere with the CEM readings.

3. Section 72.3 is amended by adding, in alphabetical order, new acronyms for CEMS, kacfm, kscfh, NIST and RATA to read as follows:

§ 72.3 Measurements, abbreviations, and acronyms.

* * * * *

CEMS—continuous emission monitoring system.

* * * * *

kacfm—thousands of cubic feet per minute at actual conditions.

kscfh—thousands of cubic feet per hour at standard conditions.

* * * * *

NIST—National Institute of Standards and Technology.

* * * * *

RATA—relative accuracy test audit.

* * * * *

§ 72.6 [Amended]

4. Section 72.6 is amended by removing from paragraph (b)(1) the word ''operation'' and adding, in its place, the words ''commercial operation.''

5. Section 72.90 is amended by revising paragraph (c)(3) to read as follows:

§ 72.90 Annual compliance certification report.

* * * * *

(c) * * *

(3) Whether all the emissions from the unit, or a group of units (including the unit) using a common stack, were monitored or accounted for through the missing data procedures and reported in the quarterly monitoring reports, including whether conditionally valid data, as defined in § 72.2, were reported in the quarterly report. If conditionally valid data were reported, the owner or operator shall indicate whether the status of all conditionally valid data has been resolved and all necessary quarterly report resubmissions have been made.

* * * * *

PART 75—CONTINUOUS EMISSION MONITORING

6. The authority citation for part 75 is revised to read as follows:

Authority: 42 U.S.C. 7601, 7651k, and 7651k note.

Subpart A—General

7. Section 75.4 is amended by revising the last sentence of paragraph (a) introductory text, revising the first sentence of paragraph (d) introductory text, revising paragraph (d)(1), adding a new sentence to the beginning of paragraph (g) introductory text, and adding a new paragraph (i) to read as follows:

§ 75.4 Compliance dates.

(a) * * * In accordance with § 75.20, the owner or operator of each existing affected unit shall ensure that all monitoring systems required by this part for monitoring SO_2, NO_X, CO_2, opacity, moisture and volumetric flow are installed and that all certification tests are completed no later than the following dates (except as provided in paragraphs (d) through (i) of this section):

* * * * *

(d) In accordance with § 75.20, the owner or operator of an existing unit that is shutdown and is not yet operating by the applicable dates listed in paragraph (a) of this section, or an existing unit which has been placed in long-term cold storage after having previously reported emissions data in accordance with this part, shall ensure that all monitoring systems required under this part for monitoring of SO_2, NO_X, CO_2, opacity, and volumetric flow are installed and all certification tests are completed no later than the earlier of 45 unit operating days or 180

calendar days after the date that the unit recommences commercial operation of the affected unit, notice of which date shall be provided under subpart G of this part. * * *

(1) The maximum potential concentration of SO_2, the maximum potential NO_X emission rate, as defined in section 2.1.2.1 of appendix A to this part, the maximum potential flow rate, as defined in section 2.1.4.1 of appendix A to this part, or the maximum potential CO_2 concentration, as defined in section 2.1.3.1 of appendix A to this part;

* * * * *

(g) The provisions of this paragraph shall apply unless an owner or operator is exempt from certifying a fuel flowmeter for use during combustion of emergency fuel under section 2.1.4.3 of appendix D to this part, in which circumstance the provisions of section 2.1.4.3 of appendix D shall apply.

* * *

* * * * *

(i) In accordance with § 75.20, the owner or operator of each affected unit at which SO_2 concentration is measured on a dry basis or at which moisture corrections are required to account for CO_2 emissions, NO_X emission rate in lb/mmBtu, heat input, or NO_X mass emissions for units in a NO_X mass reduction program, shall ensure that the continuous moisture monitoring system required by this part is installed and that all applicable initial certification tests required under § 75.20(c)(5), (c)(6), or (c)(7) for the continuous moisture monitoring system are completed no later than the following dates:

(1) April 1, 2000, for a unit that is existing and has commenced commercial operation by January 2, 2000; or

(2) For a new affected unit which has not commenced commercial operation by January 2, 2000, no later than 90 days after the date the unit commences commercial operation; or

(3) For an existing unit that is shutdown and is not yet operating by April 1, 2000, no later than the earlier of 45 unit operating days or 180 calendar days after the date that the unit recommences commercial operation.

8. Section 75.5 is amended by revising paragraphs (b), (d), and (f)(2) to read as follows:

§ 75.5 Prohibitions.

* * * * *

(b) No owner or operator of an affected unit shall operate the unit without complying with the requirements of §§ 75.2 through 75.75 and appendices A through G to this part.

* * * * *

(d) No owner or operator of an affected unit shall operate the unit so as to discharge, or allow to be discharged, emissions of SO_2, NO_X or CO_2 to the atmosphere without accounting for all such emissions in accordance with the provisions of §§ 75.10 through 75.19.

* * * * *

(f) * * *

(2) The owner or operator is monitoring emissions from the unit with another certified monitoring system or an excepted methodology approved by the Administrator for use at that unit that provides emissions data for the same pollutant or parameter as the retired or discontinued monitoring system; or

* * * * *

9. Section 75.6 is amended by revising paragraphs (a)(13), (a)(31), (a)(38), (a)(39), (b), (c), (e)(1) and (e)(2); by redesignating paragraph (a)(40) as paragraph (a)(41); and by adding new paragraphs (a)(40) and (f)(3) to read as follows:

§ 75.6 Incorporation by reference.

* * * * *

(a) * * *

(13) ASTM D1826–88, Standard Test Method for Calorific (Heating) Value of Gases in Natural Gas Range by Continuous Recording Calorimeter, for appendices D and F to this part.

* * * * *

(31) ASTM D3588–91, Standard Practice for Calculating Heat Value, Compressibility Factor, and Relative Density (Specific Gravity) of Gaseous Fuels, for appendices D and F to this part.

* * * * *

(38) ASTM D4891–89, Standard Test Method for Heating Value of Gases in Natural Gas Range by Stoichiometric Combustion, for appendices D and F to this part.

(39) ASTM D5291–92, Standard Test Methods for Instrumental Determination of Carbon, Hydrogen, and Nitrogen in Petroleum Products and Lubricants, for appendices F and G to this part.

(40) ASTM D5373–93, ''Standard Methods for Instrumental Determination of Carbon, Hydrogen, and Nitrogen in Laboratory Samples of Coal and Coke,'' for appendix G to this part.

(41) * * *

(b) The following materials are available for purchase from the American Society of Mechanical Engineers (ASME), 22 Law Drive, Box 2350, Fairfield, NJ 07007–2350.

(1) ASME MFC–3M–1989 with September 1990 Errata, Measurement of Fluid Flow in Pipes Using Orifice, Nozzle, and Venturi, for appendix D of this part.

(2) ASME MFC–4M–1986 (Reaffirmed 1990), Measurement of Gas Flow by Turbine Meters, for appendix D of this part.

(3) ASME-MFC–5M–1985, Measurement of Liquid Flow in Closed Conduits Using Transit-Time Ultrasonic Flowmeters, for appendix D of this part.

(4) ASME MFC–6M–1987 with June 1987 Errata, Measurement of Fluid Flow in Pipes Using Vortex Flow Meters, for appendix D of this part.

(5) ASME MFC–7M–1987 (Reaffirmed 1992), Measurement of Gas Flow by Means of Critical Flow Venturi Nozzles, for appendix D of this part.

(6) ASME MFC–9M–1988 with December 1989 Errata, Measurement of Liquid Flow in Closed Conduits by Weighing Method, for appendix D of this part.

(c) The following materials are available for purchase from the American National Standards Institute (ANSI), 11 W. 42nd Street, New York NY 10036: ISO 8316: 1987(E) Measurement of Liquid Flow in Closed Conduits-Method by Collection of the Liquid in a Volumetric Tank, for appendices D and E of this part.

* * * * *

(e) * * *

(1) American Gas Association Report No. 3: Orifice Metering of Natural Gas and Other Related Hydrocarbon Fluids, Part 1: General Equations and Uncertainty Guidelines (October 1990 Edition), Part 2: Specification and Installation Requirements (February 1991 Edition) and Part 3: Natural Gas Applications (August 1992 Edition), for appendices D and E of this part.

(2) American Gas Association Transmission Measurement Committee Report No. 7: Measurement of Gas by Turbine Meters (Second Revision, April, 1996), for appendix D to this part.

(f) * * *

(3) American Petroleum Institute (API) Section 2, ''Conventional Pipe Provers,'' Section 3, ''Small Volume Provers,'' and Section 5, ''Master-Meter Provers,'' from Chapter 4 of the Manual of Petroleum Measurement Standards, October 1988 (Reaffirmed 1993), for appendix D to this part.

10. Section 75.7 is removed and reserved.

§ 75.7 [Removed and Reserved]

11. Section 75.8 is removed and reserved.

§ 75.8 [Removed and Reserved]

Subpart B —Monitoring Provisions

12. Section 75.10 is amended by revising paragraphs (d)(3) and (f) to read as follows:

§ 75.10 General operating requirements.

* * * * *

(d) * * *

(3) Failure of an SO_2, CO_2, or O_2 pollutant concentration monitor, flow monitor, or NO_X continuous emission monitoring system to acquire the minimum number of data points for calculation of an hourly average in paragraph (d)(1) of this section shall result in the failure to obtain a valid hour of data and the loss of such component data for the entire hour. An hourly average NO_X or SO_2 emission rate in lb/mmBtu is valid only if the minimum number of data points is acquired by both the pollutant concentration monitor (NO_X or SO_2) and the diluent monitor (O_2 or CO_2). For a moisture monitoring system consisting of one or more oxygen analyzers capable of measuring O_2 on a wet-basis and a dry-basis, an hourly average percent moisture value is valid only if the minimum number of data points is acquired for both the wet-and dry-basis measurements. Except for SO_2 emission rate data in lb/mmBtu, if a valid hour of data is not obtained, the owner or operator shall estimate and record emissions, moisture, or flow data for the missing hour by means of the automated data acquisition and handling system, in accordance with the applicable procedure for missing data substitution in subpart D of this part.

* * * * *

(f) *Minimum measurement capability requirement.* The owner or operator shall ensure that each continuous emission monitoring system and component thereof is capable of accurately measuring, recording, and reporting data, and shall not incur an exceedance of the full scale range, except as provided in sections 2.1.1.5, 2.1.2.5, and 2.1.4.3 of appendix A to this part.

* * * * *

13. Section 75.11 is amended by revising paragraphs (a), (b), (d)(1), (d)(2), (e) introductory text, (e)(1), (e)(2), (e)(3) introductory text, (e)(3)(ii), (e)(3)(iv), and by removing paragraph (e)(4) to read as follows:

§ 75.11 Specific provisions for monitoring SO_2 emissions (SO_2 and flow monitors).

(a) *Coal-fired units.* The owner or operator shall meet the general operating requirements in § 75.10 for an SO_2 continuous emission monitoring system and a flow monitoring system for each affected coal-fired unit while the unit is combusting coal and/or any other fuel, except as provided in paragraph (e) of this section, in § 75.16, and in subpart E of this part. During hours in which only gaseous fuel is combusted in the unit, the owner or operator shall comply with the applicable provisions of paragraph (e)(1), (e)(2), or (e)(3) of this section.

(b) *Moisture correction.* Where SO_2 concentration is measured on a dry basis, the owner or operator shall either:

(1) Report the appropriate fuel-specific default moisture value for each unit operating hour, selected from among the following: 3.0%, for anthracite coal; 6.0% for bituminous coal; 8.0% for sub-bituminous coal; 11.0% for lignite coal; 13.0% for wood; or

(2) Install, operate, maintain, and quality assure a continuous moisture monitoring system for measuring and recording the moisture content of the flue gases, in order to correct the measured hourly volumetric flow rates for moisture when calculating SO_2 mass emissions (in lb/hr) using the procedures in appendix F to this part. The following continuous moisture monitoring systems are acceptable: a continuous moisture sensor; an oxygen analyzer (or analyzers) capable of measuring O_2 both on a wet basis and on a dry basis; or a stack temperature sensor and a moisture look-up table, i.e., a psychometric chart (for saturated gas streams following wet scrubbers or other demonstrably saturated gas streams, only). The moisture monitoring system shall include as a component the automated data acquisition and handling system (DAHS) for recording and reporting both the raw data (e.g., hourly average wet-and dry-basis O_2 values) and the hourly average values of the stack gas moisture content derived from those data. When a moisture look-up table is used, the moisture monitoring system shall be represented as a single component, the certified DAHS, in the monitoring plan for the unit or common stack.

* * * * *

(d) * * *

(1) By meeting the general operating requirements in § 75.10 for an SO_2 continuous emission monitoring system and flow monitoring system. If this option is selected, the owner or operator shall comply with the applicable provisions in paragraph (e)(1), (e)(2), or (e)(3) of this section during hours in which the unit combusts only gaseous fuel;

(2) By providing other information satisfactory to the Administrator using the applicable procedures specified in appendix D to this part for estimating hourly SO_2 mass emissions; or

* * * * *

(e) *Units with SO_2 continuous emission monitoring systems during the combustion of gaseous fuel.* The owner or operator of an affected unit with an SO_2 continuous emission monitoring system shall, during any hour in which the unit combusts only gaseous fuel, determine SO_2 emissions in accordance with paragraph (e)(1), (e)(2) or (e)(3) of this section, as applicable.

(1) If the gaseous fuel meets the definition of ''pipeline natural gas'' or ''natural gas'' in § 72.2 of this chapter, the owner or operator may, in lieu of operating and recording data from the SO_2 monitoring system, determine SO_2 emissions by using Equation F–23 in appendix F to this part. Substitute into Equation F–23 the hourly heat input, calculated using a certified flow monitoring system and a certified diluent monitor, in conjunction with the appropriate default SO_2 emission rate from section 2.3.1.1 or 2.3.2.1.1 of appendix D to this part, and Equation D–5 in appendix D to this part. When this option is chosen, the owner or operator shall perform the necessary data acquisition and handling system tests under § 75.20(c), and shall meet all quality control and quality assurance requirements in appendix B to this part for the flow monitor and the diluent monitor.

(2) The owner or operator may, in lieu of operating and recording data from the SO_2 monitoring system, determine SO_2 emissions by certifying an excepted monitoring system in accordance with § 75.20 and appendix D to this part, following the applicable fuel sampling and analysis procedures in section 2.3 of appendix D to this part, meeting the recordkeeping requirements of § 75.55 or § 75.58, as applicable, and meeting all quality control and quality assurance requirements for fuel flowmeters in appendix D to this part. If this compliance option is selected, the hourly unit heat input reported under § 75.54(b)(5) or § 75.57(b)(5), as applicable, shall be determined using a certified flow monitoring system and a certified diluent monitor, in accordance with the procedures in section 5.2 of appendix F to this part. The flow monitor and diluent monitor shall meet all of the applicable quality control and quality assurance requirements of appendix B to this part.

(3) The owner or operator may determine SO_2 mass emissions by using a certified SO_2 continuous monitoring system, in conjunction with a certified flow rate monitoring system. However, if the unit burns any gaseous fuel that is very low sulfur fuel (as defined in § 72.2 of this chapter), then on and after April 1, 2000, the SO_2 monitoring

system shall be subject to the following quality assurance provisions when the very low sulfur fuel is combusted. Prior to April 1, 2000, the owner or operator may comply with these provisions.

* * * * *

(ii) EPA recommends that the calibration response of the SO_2 monitoring system be adjusted, either automatically or manually, in accordance with the procedures for routine calibration adjustments in section 2.1.3 of appendix B to this part, whenever the zero-level calibration response during a required daily calibration error test exceeds the applicable performance specification of the instrument in section 3.1 of appendix A to this part (i.e., ±2.5 percent of the span value or ±5 ppm, whichever is less restrictive).

* * * * *

(iv) In accordance with the requirements of section 2.1.1.2 of appendix A to this part, for units that sometimes burn gaseous fuel that is very low sulfur fuel (as defined in § 72.2 of this chapter) and at other times burn higher sulfur fuel(s) such as coal or oil, a second low-scale SO_2 measurement range is not required when the very low sulfur gaseous fuel is combusted. For units that burn only gaseous fuel that is very low sulfur fuel and burn no other type(s) of fuel(s), the owner or operator shall set the span of the SO_2 monitoring system to a value no greater than 200 ppm.

* * * * *

14. Section 75.12 is amended by revising the first sentence in paragraph (a); by redesignating existing paragraphs (b), (c), (d) and (e) as paragraphs (c), (d), (e) and (f), respectively; by adding new paragraph (b); and by revising the newly designated paragraph (c) to read as follows:

§ 75.12 Specific provisions for monitoring NO_X emission rate (NO_X and diluent gas monitors).

(a) *Coal-fired units, gas-fired nonpeaking units or oil-fired nonpeaking units.* The owner or operator shall meet the general operating requirements in § 75.10 of this part for a NO_X continuous emission monitoring system for each affected coal-fired unit, gas-fired nonpeaking unit, or oil-fired nonpeaking unit, except as provided in paragraph (d) of this section, § 75.17, and subpart E of this part. * * *

(b) *Moisture correction.* If a correction for the stack gas moisture content is needed to properly calculate the NO_X emission rate in lb/mmBtu, e.g., if the NO_X pollutant concentration monitor measures on a different moisture basis from the diluent monitor, the owner or operator shall either report a fuel-specific default moisture value for each unit operating hour, as provided in § 75.11(b)(1), or shall install, operate, maintain, and quality assure a continuous moisture monitoring system, as defined in § 75.11(b)(2). Notwithstanding this requirement, if Equation 19–3, 19–4 or 19–8 in Method 19 in appendix A to part 60 of this chapter is used to measure NO_X emission rate, the following fuel-specific default moisture percentages shall be used in lieu of the default values specified in § 75.11(b)(1): 5.0%, for anthracite coal; 8.0% for bituminous coal; 12.0% for sub-bituminous coal; 13.0% for lignite coal; and 15.0% for wood.

(c) *Determination of NO_X emission rate.* The owner or operator shall calculate hourly, quarterly, and annual NO_X emission rates (in lb/mmBtu) by combining the NO_X concentration (in ppm), diluent concentration (in percent O_2 or CO_2), and percent moisture (if applicable) measurements according to the procedures in appendix F to this part.

* * * * *

15. Section 75.13 is amended by revising paragraphs (a) and (c) to read as follows:

§ 75.13 Specific provisions for monitoring CO_2 emissions.

(a) *CO_2 continuous emission monitoring system.* If the owner or operator chooses to use the continuous emission monitoring method, then the owner or operator shall meet the general operating requirements in § 75.10 for a CO_2 continuous emission monitoring system and flow monitoring system for each affected unit. The owner or operator shall comply with the applicable provisions specified in §§ 75.11(a) through (e) or § 75.16, except that the phrase ''CO_2 continuous emission monitoring system'' shall apply rather than ''SO_2 continuous emission monitoring system,'' the phrase ''CO_2 concentration'' shall apply rather than ''SO_2 concentration,'' the term ''maximum potential concentration of CO_2'' shall apply rather than ''maximum potential concentration of SO_2,'' and the phrase ''CO_2 mass emissions'' shall apply rather than ''SO_2 mass emissions.''

* * * * *

(c) *Determination of CO_2 mass emissions using an O_2 monitor according to appendix F to this part.* If the owner or operator chooses to use the appendix F method, then the owner or operator may determine hourly CO_2 concentration and mass emissions with a flow monitoring system; a continuous O_2 concentration monitor; fuel F and F_c factors; and, where O_2 concentration is measured on a dry basis, a continuous moisture monitoring system, as specified in § 75.11(b)(2), or a fuel-specific default moisture percentage (if applicable), as defined in § 75.11(b)(1), and by using the methods and procedures specified in appendix F to this part. For units using a common stack, multiple stack, or bypass stack, the owner or operator may use the provisions of § 75.16, except that the phrase ''CO_2 continuous emission monitoring system'' shall apply rather than ''SO_2 continuous emission monitoring system,'' the term ''maximum potential concentration of CO_2'' shall apply rather than ''maximum potential concentration of SO_2,'' and the phrase ''CO_2 mass emissions'' shall apply rather than ''SO_2 mass emissions.''

* * * * *

16. Section 75.16 is amended by:

a. Revising paragraphs (b)(2)(ii)(B), (b)(2)(ii)(D), (d)(2), and (e)(1);

b. Removing paragraphs (e)(2) and (e)(3);

c. Redesignating existing paragraphs (e)(4) and (e)(5) as paragraphs (e)(2) and (e)(3), respectively;

d. Adding a new sentence to the end of the newly designated paragraph (e)(3); and

e. Adding a new paragraph (e)(4), to read as follows:

§ 75.16 Special provisions for monitoring emissions from common, bypass, and multiple stacks for SO_2 emissions and heat input determinations.

* * * * *

(b) * * *

(2) * * *

(ii) * * *

(B) Install, certify, operate, and maintain an SO_2 continuous emission monitoring system and flow monitoring system in the duct from each nonaffected unit; determine SO_2 mass emissions from the affected units as the difference between SO_2 mass emissions measured in the common stack and SO_2 mass emissions measured in the ducts of the nonaffected units, not to be reported as an hourly average value less than zero; combine emissions for the Phase I and Phase II affected units for recordkeeping and compliance purposes; and calculate and report SO_2 mass emissions from the Phase I and Phase II affected units, pursuant to an approach approved by the Administrator, such that these emissions are not underestimated; or

* * * * *

(D) Petition through the designated representative and provide information satisfactory to the Administrator on methods for apportioning SO_2 mass emissions measured in the common stack to each of the units using the common stack and on reporting the SO_2 mass emissions. The Administrator may approve such demonstrated substitute methods for apportioning and reporting SO_2 mass emissions measured in a common stack whenever the demonstration ensures that there is a complete and accurate accounting of all emissions regulated under this part and, in particular, that the emissions from any affected unit are not underestimated.

* * * * *

(d) * * *

(2) Install, certify, operate, and maintain an SO_2 continuous emission monitoring system and flow monitoring system in each stack. Determine SO_2 mass emissions from each affected unit as the sum of the SO_2 mass emissions recorded for each stack. Notwithstanding the prior sentence, if another unit also exhausts flue gases to one or more of the stacks, the owner or operator shall also comply with the applicable common stack requirements of this section to determine and record SO_2 mass emissions from the units using that stack and shall calculate and report SO_2 mass emissions from the affected units and stacks, pursuant to an approach approved by the Administrator, such that these emissions are not underestimated.

(e) * * *

(1) The owner or operator of an affected unit using a common stack, bypass stack, or multiple stack with a diluent monitor and a flow monitor on each stack may choose to install monitors to determine the heat input for the affected unit, wherever flow and diluent monitor measurements are used to determine the heat input, using the procedures specified in paragraphs (a) through (d) of this section, except that the term ''heat input'' shall apply rather than ''SO_2 mass emissions'' or ''emissions'' and the phrase ''a diluent monitor and a flow monitor'' shall apply rather than ''SO_2 continuous emission monitoring system and flow monitoring system.'' The applicable equation in appendix F to this part shall be used to calculate the heat input from the hourly flow rate, diluentmonitor measurements, and (if the equation in appendix F requires a correction for the stack gas moisture content) hourly moisture measurements. Notwithstanding the options for combining heat input in paragraphs (a)(1)(ii), (a)(2)(ii), (b)(1)(ii), and (b)(2)(ii) of this section, the owner or operator of an affected unit with a diluent monitor and a flow monitor installed on a common stack to determine the combined heat input at the common stack shall also determine and report heat input to each individual unit.

* * * * *

(3) * * * If using either of these apportionment methods, the owner or operator shall apportion according to section 5.6 of appendix F to this part.

(4) Notwithstanding paragraph (e)(1) of this section, any affected unit that is using the procedures in this part to meet the monitoring and reporting requirements of a State or federal NO_X mass emission reduction program must also meet the requirements for monitoring heat input in §§ 75.71, 75.72 and 75.75.

17. Section 75.17 is amended by revising paragraph (a)(2)(i)(C) to read as follows:

§ 75.17 Specific provisions for monitoring emissions from common, by-pass, and multiple stacks for NO_X emission rate.

* * * * *

(a) * * *

(2) * * *

(i) * * *

(C) Each unit's compliance with the applicable NO_X emission limit will be determined by a method satisfactory to the Administrator for apportioning to each of the units the combined NO_X emission rate (in lb/mmBtu) measured in the common stack and for reporting the NO_X emission rate, as provided in a petition submitted by the designated representative. The Administrator may approve such demonstrated substitute methods for apportioning and reporting NO_X emission rate measured in a common stack whenever the demonstration ensures that there is a complete and accurate estimation of all emissions regulated under this part and, in particular, that the emissions from any unit with a NO_X emission limitation are not underestimated.

* * * * *

18. Section 75.19 is amended by:

a. Redesignating Tables 1, 2, 3, 4, 5 and 6 as LM–1, LM–2, LM–3, LM–4, LM–5 and LM–6, respectively;

b. Revising all references to Tables 1, 2, 3, 4, 5 and 6 in § 75.19 to LM–1, LM–2, LM–3, LM–4, LM–5, and LM–6, respectively;

c. Revising newly designated Table LM–5;

d. Correcting paragraph (c)(3)(ii)(D)(*2*) and the term ''$EFNO_X$'' that follows Eq. LM–10 in paragraph (c)(4)(ii)(A) to read as follows:

§ 75.19 Optional SO_2, NO_X, and CO_2 emissions calculation for low mass emissions units.

* * * * *

(c) * * *

(3) * * *

(ii) * * *

(D) * * *

(*2*) Using the appropriate default specific gravity value in Table LM–6 of this section.

* * * * *

(4) * * *

(ii) * * *

(A) * * *

Where:

* * * * *

$EFNNO_X$ = Either the NO_X emission factor from Table LM–2 of this section or the fuel- and unit-specific NO_X emission rate determined under paragraph (c)(1)(iv) of this section (lb/mmBtu).

* * * * *

TABLE LM–5.—DEFAULT GROSS CALORIFIC VALUES (GCVS) FOR VARIOUS FUELS

Fuel	GCV for use in equation LM–2 or LM–3
Pipeline Natural Gas	1050 Btu/scf.
Natural Gas	1100 Btu/scf.
Residual Oil	19,700 Btu/lb or 167,500 Btu/gallon.
Diesel Fuel	20,500 Btu/lb or 151,700 Btu/gallon.

* * * * *

Subpart C—Operation and Maintenance Requirements

19. Section 75.20 is amended by:

a. Revising the title of the section;

b. Revising the titles of paragraphs (c), (d) and (g);

c. Revising the introductory text of paragraphs (a), (c) and (g);

d. Revising paragraphs (a)(1), (a)(3), (a)(4) introductory text, (a)(4)(i), (a)(4)(ii), (a)(4)(iii), (a)(5)(i), (b), (c)(1), (c)(1)(i), (c)(1)(ii), (c)(1)(iii), (d)(1), (d)(2), (g)(1), (g)(1)(i), (g)(2), (g)(4), (g)(5) and (h)(2);

e. Removing existing paragraph (c)(3);

f. Redesignating existing paragraphs (c)(4), (c)(5), (c)(6), (c)(7), and (c)(8) as paragraphs (c)(3), (c)(4), (c)(8), (c)(9), and (c)(10), respectively;

g. Revising newly redesignated paragraphs (c)(3), (c)(4) introductory text, (c)(8) introductory text, (c)(8)(i), and (c)(10) introductory text; and

h. Adding new paragraphs (c)(5), (c)(6), (c)(7), (g)(6) and (g)(7), to read as follows:

§ 75.20 Initial certification and recertification procedures.

(a) *Initial certification approval process.* The owner or operator shall ensure that each continuous emission or opacity monitoring system required by this part, which includes the automated data acquisition and handling system, and, where applicable, the CO_2 continuous emission monitoring system, meets the initial certification requirements of this section and shall ensure that all applicable initial certification tests under paragraph (c) of this section are completed by the deadlines specified in § 75.4 and prior to use in the Acid Rain Program. In addition, whenever the owner or operator installs a continuous emission or opacity monitoring system in order to meet the requirements of §§ 75.11 through 75.18, where no continuous emission or opacity monitoring system was previously installed, initial certification is required.

(1) *Notification of initial certification test dates.* The owner or operator or designated representative shall submit a written notice of the dates of initial certification testing at the unit as specified in § 75.61(a)(1).

* * * * *

(3) *Provisional approval of certification (or recertification) applications.* Upon the successful completion of the required certification (or recertification) procedures of this section for each continuous emission or opacity monitoring system or component thereof, continuous emission or opacity monitoring system or component thereof shall be deemed provisionally certified (or recertified) for use under the Acid Rain Program for a period not to exceed 120 days following receipt by the Administrator of the complete certification (or recertification) application under paragraph (a)(4) of this section. Notwithstanding this paragraph, no continuous emission or opacity monitor systems for a combustion source seeking to enter the Opt-in Program in accordance with part 74 of this chapter shall be deemed provisionally certified (or recertified) for use under the Acid Rain Program. Data measured and recorded by a provisionally certified (or recertified) continuous emission or opacity monitoring system or component thereof, operated in accordance with the requirements of appendix B to this part, will be considered valid quality-assured data (retroactive to the date and time of provisional certification or recertification), provided that the Administrator does not invalidate the provisional certification (or recertification) by issuing a notice of disapproval within 120 days of receipt by the Administrator of the complete certification (or recertification) application. Note that when the data validation procedures of paragraph (b)(3) of this section are used for the initial certification (or recertification) of a continuous emissions monitoring system, the date and time of provisional certification (or recertification) of the CEMS may be earlier than the date and time of completion of the required certification (or recertification) tests.

(4) *Certification (or recertification) application formal approval process.* The Administrator will issue a notice of approval or disapproval of the certification (or recertification) application to the owner or operator within 120 days of receipt of the complete certification (or recertification) application. In the event the Administrator does not issue such a notice within 120 days of receipt, each continuous emission or opacity monitoring system which meets the performance requirements of this part and is included in the certification (or recertification) application will be deemed certified (or recertified) for use under the Acid Rain Program.

(i) *Approval notice.* If the certification (or recertification) application is complete and shows that each continuous emission or opacity monitoring system meets the performance requirements of this part, then the Administrator will issue a notice of approval of the certification (or recertification) application within 120 days of receipt.

(ii) *Incomplete application notice.* A certification (or recertification) application will be considered complete when all of the applicable information required to be submitted in § 75.63 has been received by the Administrator, the EPA Regional Office, and the appropriate State and/or local air pollution control agency. If the certification (or recertification) application is not complete, then the Administrator will issue a notice of incompleteness that provides a reasonable timeframe for the designated representative to submit the additional information required to complete the certification (or recertification) application. If the designated representative has not complied with the notice of incompleteness by a specified due date, then the Administrator may issue a notice of disapproval specified under paragraph (a)(4)(iii) of this section. The 120-day review period shall not begin prior to receipt of a complete application.

(iii) *Disapproval notice.* If the certification (or recertification) application shows that any continuous emission or opacity monitoring system or component thereof does not meet the performance requirements of this part, or if the certification (or recertification) application is incomplete and the requirement for disapproval under paragraph (a)(4)(ii) of this section has been met, the Administrator shall issue a written notice of disapproval of the certification (or recertification) application within 120 days of receipt. By issuing the notice of disapproval, the provisional certification (or recertification) is invalidated by the Administrator, and the data measured and recorded by each uncertified continuous emission or opacity monitoring system or component thereof shall not be considered valid quality-assured data as follows: from the hour of the probationary calibration error test that began the initial certification (or recertification) test period (if the data validation procedures of paragraph (b)(3) of this section were used to retrospectively validate data); or from the date and time of completion of the invalid certification or recertification tests (if the data validation procedures of paragraph (b)(3) of this section were not used), until the date and time that the owner or operator completes subsequently approved initial certification or recertification tests. The owner or operator shall follow the procedures for loss of initial certification in paragraph (a)(5) of this section for each continuous emission or opacity monitoring system or component thereof which is disapproved for initial certification. For each disapproved recertification, the owner or operator shall follow the procedures of paragraph (b)(5) of this section.

* * * * *

(5) * * *

(i) Until such time, date, and hour as the continuous emission monitoring system or component thereof can be adjusted, repaired, or replaced and certification tests successfully completed, the owner or operator shall substitute the following values, as applicable, for each hour of unit operation during the period of invalid data specified in paragraph (a)(4)(iii) of this section or in § 75.21: the maximum potential concentration of SO_2, as defined in section 2.1.1.1 of appendix A to this part, to report SO_2 concentration; the maximum potential NO_X emission rate, as defined in § 72.2 of this chapter, to report NO_X emissions in lb/mmBtu; the maximum potential concentration of

NO_X, as defined in section 2.1.2.1 of appendix A to this part, to report NO_X emissions in ppm (when a NO_X concentration monitoring system is used to determine NO_X mass emissions, as defined under § 75.71(a)(2)); the maximum potential flow rate, as defined in section 2.1.4.1 of appendix A to this part, to report volumetric flow; the maximum potential concentration of CO_2, as defined in section 2.1.3.1 of appendix A to this part, to report CO_2 concentration data; and either the minimum potential moisture percentage, as defined in section 2.1.5 of appendix A to this part or, if Equation 19–3, 19–4 or 19–8 in Method 19 in appendix A to part 60 of this chapter is used to determine NO_X emission rate, the maximum potential moisture percentage, as defined in section 2.1.6 of appendix A to this part; and

* * * * *

(b) *Recertification approval process.* Whenever the owner or operator makes a replacement, modification, or change in a certified continuous emission monitoring system or continuous opacity monitoring system that may significantly affect the ability of the system to accurately measure or record the SO_2 or CO_2 concentration, stack gas volumetric flow rate, NO_X emission rate, percent moisture, or opacity, or to meet the requirements of § 75.21 or appendix B to this part, the owner or operator shall recertify the continuous emission monitoring system or continuous opacity monitoring system, according to the procedures in this paragraph. Furthermore, whenever the owner or operator makes a replacement, modification, or change to the flue gas handling system or the unit operation that may significantly change the flow or concentration profile, the owner or operator shall recertify the monitoring system according to the procedures in this paragraph. Examples of changes which require recertification include: replacement of the analyzer; change in location or orientation of the sampling probe or site; and complete replacement of an existing continuous emission monitoring system or continuous opacity monitoring system. The owner or operator shall recertify a continuous opacity monitoring system whenever the monitor path length changes or as required by an applicable State or local regulation or permit. Any change to a flow monitor or gas monitoring system for which a RATA is not necessary shall not be considered a recertification event. In addition, changing the polynomial coefficients or K factor(s) of a flow monitor shall require a 3-load RATA, but is not considered to be a recertification event; however, records of the polynomial coefficients or K factor (s) currently in use shall be maintained on-site in a format suitable for inspection. Changing the coefficient or K factor(s) of a moisture monitoring system shall require a RATA, but is not considered to be a recertification event; however, records of the coefficient or K factor (s) currently in use by the moisture monitoring system shall be maintained on-site in a format suitable for inspection. In such cases, any other tests that are necessary to ensure continued proper operation of the monitoring system (e.g., 3-load flow RATAs following changes to flow monitor polynomial coefficients, linearity checks, calibration error tests, DAHS verifications, etc.) shall be performed as diagnostic tests, rather than as recertification tests. The data validation procedures in paragraph (b)(3) of this section shall be applied to RATAs associated with changes to flow or moisture monitor coefficients, and to linearity checks, 7-day calibration error tests, and cycle time tests, when these are required as diagnostic tests. When the data validation procedures of paragraph (b)(3) of this section are applied in this manner, replace the word ''recertification'' with the word ''diagnostic.''

(1) *Tests required.* For all recertification testing, the owner or operator shall complete all initial certification tests in paragraph (c) of this section that are applicable to the monitoring system, except as otherwise approved by the Administrator. For diagnostic testing after changing the flow rate monitor polynomial coefficients, the owner or operator shall complete a 3-level RATA. For diagnostic testing after changing the K factor or mathematical algorithm of a moisture monitoring system, the owner or operator shall complete a RATA.

(2) *Notification of recertification test dates.* The owner, operator, or designated representative shall submit notice of testing dates for recertification under this paragraph as specified in § 75.61(a)(1)(ii), unless all of the tests in paragraph (c) of this section are not required for recertification, in which case the owner or operator shall provide notice in accordance with the notice provisions for initial certification testing in § 75.61(a)(1)(i).

(3) *Recertification test period requirements and data validation.* The data validation provisions in paragraphs (b)(3)(i) through (b)(3)(ix) of this section shall apply to all CEMS recertifications and diagnostic testing. The provisions in paragraphs (b)(3)(ii) through (b)(3)(ix) of this section may also be applied to initial certifications (see sections 6.2(a), 6.3.1(a), 6.3.2(a), 6.4(a) and 6.5(f) of appendix A to this part) and may be used to supplement the linearity check and RATA data validation procedures in sections 2.2.3(b) and 2.3.2(b) of appendix B to this part.

(i) In the period extending from the hour of the replacement, modification or change made to a monitoring system that triggers the need to perform recertification test(s) of the CEMS to the hour of successful completion of a probationary calibration error test (according to paragraph (b)(3)(ii) of this section) following the replacement, modification, or change to the CEMS, the owner or operator shall either substitute for missing data, according to the standard missing data procedures in §§ 75.33 through 75.37, or report emission data using a reference method or another monitoring system that has been certified or approved for use under this part. Notwithstanding this requirement, if the replacement, modification, or change requiring recertification of the CEMS is such that the historical data stream is no longer representative (e.g., where the SO_2 concentration and stack flow rate change significantly after installation of a wet scrubber), the owner or operator shall substitute for missing data as follows, in the period extending from the hour of commencement of the replacement, modification, or change requiring recertification of the CEMS to the hour of commencement of the recertification test period: For a change that results in a significantly higher concentration or flow rate, substitute maximum potential values according to the procedures in paragraph (a)(5) of this section; or for a change that results in a significantly lower concentration or flow rate, substitute data using the standard missing data procedures. The owner or operator shall then use the initial missing data procedures in § 75.31, beginning with the first hour of quality assured data obtained with the recertified monitoring system, unless otherwise provided by § 75.34 for units with add-on emission controls. The first hour of quality-assured data for the recertified monitoring system shall be determined in accordance with paragraphs (b)(3)(ii) through (b)(3)(ix) of this section.

(ii) Once the modification or change to the CEMS has been completed and all of the associated repairs, component replacements, adjustments, linearization, and reprogramming of the CEMS have been completed, a probationary calibration error test is required to establish the beginning point of the recertification test period. In this

instance, the first successful calibration error test of the monitoring system following completion of all necessary repairs, component replacements, adjustments, linearization and reprogramming shall be the probationary calibration error test. The probationary calibration error test must be passed before any of the required recertification tests are commenced.

(iii) Beginning with the hour of commencement of a recertification test period, emission data recorded by the CEMS are considered to be conditionally valid, contingent upon the results of the subsequent recertification tests.

(iv) Each required recertification test shall be completed no later than the following number of unit operating hours (or unit operating days) after the probationary calibration error test that initiates the test period:

(A) For a linearity check and/or cycle time test, 168 consecutive unit operating hours, as defined in § 72.2 of this chapter or, for CEMS installed on common stacks or bypass stacks, 168 consecutive stack operating hours, as defined in § 72.2 of this chapter;

(B) For a RATA (whether normal-load or multiple-load), 720 consecutive unit operating hours, as defined in § 72.2 of this chapter or, for CEMS installed on common stacks or bypass stacks, 720 consecutive stack operating hours, as defined in § 72.2 of this chapter; and

(C) For a 7-day calibration error test, 21 consecutive unit operating days, as defined in § 72.2 of this chapter.

(v) All recertification tests shall be performed hands-off. No adjustments to the calibration of the CEMS, other than the routine calibration adjustments following daily calibration error tests as described in section 2.1.3 of appendix B to this part, are permitted during the recertification test period. Routine daily calibration error tests shall be performed throughout the recertification test period, in accordance with section 2.1.1 of appendix B to this part. The additional calibration error test requirements in section 2.1.3 of appendix B to this part shall also apply during the recertification test period.

(vi) If all of the required recertification tests and required daily calibration error tests are successfully completed in succession with no failures, and if each recertification test is completed within the time period specified in paragraph (b)(3)(iv)(A), (B), or (C) of this section, then all of the conditionally valid emission data recorded by the CEMS shall be considered quality assured, from the hour of commencement of the recertification test period until the hour of completion of the required test(s).

(vii) If a required recertification test is failed or aborted due to a problem with the CEMS, or if a daily calibration error test is failed during a recertification test period, data validation shall be done as follows:

(A) If any required recertification test is failed, it shall be repeated. If any recertification test other than a 7-day calibration error test is failed or aborted due to a problem with the CEMS, the original recertification test period is ended, and a new recertification test period must be commenced with a probationary calibration error test. The tests that are required in the new recertification test period will include any tests that were required for the initial recertification event which were not successfully completed and any recertification or diagnostic tests that are required as a result of changes made to the monitoring system to correct the problems that caused the failure of the recertification test. For a 2- or 3-load flow RATA, if the relative accuracy test is passed at one or more load levels, but is failed at a subsequent load level, provided that the problem that caused the RATA failure is corrected without re-linearizing the instrument, the length of the new recertification test period shall be equal to the number of unit operating hours remaining in the original recertification test period, as of the hour of failure of the RATA. However, if re-linearization of the flow monitor is required after a flow RATA is failed at a particular load level, then a subsequent 3-load RATA is required, and the new recertification test period shall be 720 consecutive unit (or stack) operating hours. The new recertification test sequence shall not be commenced until all necessary maintenance activities, adjustments, linearizations, and reprogramming of the CEMS have been completed;

(B) If a linearity check, RATA, or cycle time test is failed or aborted due to a problem with the CEMS, all conditionally valid emission data recorded by the CEMS are invalidated, from the hour of commencement of the recertification test period to the hour in which the test is failed or aborted, except for the case in which a multiple-load flow RATA is passed at one or more load levels, failed at a subsequent load level, and the problem that caused the RATA failure is corrected without re-linearizing the instrument. In that case, data invalidation shall be prospective, from the hour of failure of the RATA until the commencement of the new recertification test period. Data from the CEMS remain invalid until the hour in which a new recertification test period is commenced, following corrective action, and a probationary calibration error test is passed, at which time the conditionally valid status of emission data from the CEMS begins again;

(C) If a 7-day calibration error test is failed within the recertification test period, previously-recorded conditionally valid emission data from the CEMS are not invalidated. The conditionally valid data status is unaffected, unless the calibration error on the day of the failed 7-day calibration error test exceeds twice the performance specification in section 3 of appendix A to this part, as described in paragraph (b)(3)(vii)(D) of this section; and

(D) If a daily calibration error test is failed during a recertification test period (i.e., the results of the test exceed twice the performance specification in section 3 of appendix A to this part), the CEMS is out-of-control as of the hour in which the calibration error test is failed. Emission data from the CEMS shall be invalidated prospectively from the hour of the failed calibration error test until the hour of completion of a subsequent successful calibration error test following corrective action, at which time the conditionally valid status of data from the monitoring system resumes. Failure to perform a required daily calibration error test during a recertification test period shall also cause data from the CEMS to be invalidated prospectively, from the hour in which the calibration error test was due until the hour of completion of a subsequent successful calibration error test. Whenever a calibration error test is failed or missed during a recertification test period, no further recertification tests shall be performed until the required subsequent calibration error test has been passed, re-establishing the conditionally valid status of data from the monitoring system. If a calibration error test failure occurs while a linearity check or RATA is still in progress, the linearity check or RATA must be re-started.

(E) Trial gas injections and trial RATA runs are permissible during the recertification test period, prior to commencing a linearity check or RATA, for the purpose of optimizing the performance of the CEMS. The results of such gas injections and trial runs shall not affect the status of previously-recorded conditionally valid data or result in termination of the recertification test period, provided that the following specifications and conditions are met:

(*1*) For gas injections, the stable, ending monitor response is within ±5

percent or within 5 ppm of the tag value of the reference gas;

(*2*) For RATA trial runs, the average reference method reading and the average CEMS reading for the run differ by no more than ±10% of the average reference method value or ±15 ppm, or ±1.5% H_2O, or ±0.02 lb/mmBtu from the average reference method value, as applicable;

(*3*) No adjustments to the calibration of the CEMS are made following the trial injection(s) or run(s), other than the adjustments permitted under section 2.1.3 of appendix B to this part; and

(*4*) The CEMS is not repaired, re-linearized or reprogrammed (e.g., changing flow monitor polynomial coefficients, linearity constants, or K-factors) after the trial injection(s) or run(s).

(F) If the results of any trial gas injection(s) or RATA run(s) are outside the limits in paragraphs (b)(3)(vii)(E)(*1*) or (*2*) of this section or if the CEMS is repaired, re-linearized or reprogrammed after the trial injection(s) or run(s), the trial injection(s) or run(s) shall be counted as a failed linearity check or RATA attempt. If this occurs, follow the procedures pertaining to failed and aborted recertification tests in paragraphs (b)(3)(vii)(A) and (b)(3)(vii)(B) of this section.

(viii) If any required recertification test is not completed within its allotted time period, data validation shall be done as follows. For a late linearity test, RATA, or cycle time test that is passed on the first attempt, data from the monitoring system shall be invalidated from the hour of expiration of the recertification test period until the hour of completion of the late test. For a late 7-day calibration error test, whether or not it is passed on the first attempt, data from the monitoring system shall also be invalidated from the hour of expiration of the recertification test period until the hour of completion of the late test. For a late linearity test, RATA, or cycle time test that is failed on the first attempt or aborted on the first attempt due to a problem with the monitor, all conditionally valid data from the monitoring system shall be considered invalid back to the hour of the first probationary calibration error test which initiated the recertification test period. Data from the monitoring system shall remain invalid until the hour of successful completion of the late recertification test and any additional recertification or diagnostic tests that are required as a result of changes made to the monitoring system to correct problems that caused failure of the late recertification test.

(ix) If any required recertification test of a monitoring system has not been completed by the end of a calendar quarter and if data contained in the quarterly report are conditionally valid pending the results of test(s) to be completed in a subsequent quarter, the owner or operator shall indicate this by means of a suitable conditionally valid data flag in the electronic quarterly report for that quarter. The owner or operator shall resubmit the report for that quarter if the required recertification test is subsequently failed. In the resubmitted report, the owner or operator shall use the appropriate missing data routine in § 75.31 or § 75.33 to replace with substitute data each hour of conditionally valid data that was invalidated by the failed recertification test. Alternatively, if any required recertification test is not completed by the end of a particular calendar quarter but is completed no later than 30 days after the end of that quarter (i.e., prior to the deadline for submitting the quarterly report under § 75.64), the test data and results may be submitted with the earlier quarterly report even though the test date(s) are from the next calendar quarter. In such instances, if the recertification test(s) are passed in accordance with the provisions of paragraph (b)(3) of this section, conditionally valid data may be reported as quality-assured, in lieu of reporting a conditional data flag. If the recertification test(s) is failed and if conditionally valid data are replaced, as appropriate, with substitute data, then neither the reporting of a conditional data flag nor resubmission is required. In addition, if the owner or operator uses a conditionally valid data flag in any of the four quarterly reports for a given year, the owner or operator shall indicate the final status of the conditionally valid data (i.e., resolved or unresolved) in the annual compliance certification report required under § 72.90 of this chapter for that year. The Administrator may invalidate any conditionally valid data that remains unresolved at the end of a particular calendar year and may require the owner or operator to resubmit one or more of the quarterly reports for that calendar year, replacing the unresolved conditionally valid data with substitute data values determined in accordance with § 75.31 or § 75.33, as appropriate.

(4) *Recertification application.* The designated representative shall apply for recertification of each continuous emission or opacity monitoring system used under the Acid Rain Program. The owner or operator shall submit the recertification application in accordance with § 75.60, and each complete recertification application shall include the information specified in § 75.63.

(5) *Approval or disapproval of request for recertification.* The procedures for provisional certification in paragraph (a)(3) of this section shall apply to recertification applications. The Administrator will issue a notice of approval, disapproval, or incompleteness according to the procedures in paragraph (a)(4) of this section. In the event that a recertification application is disapproved, data from the monitoring system are invalidated and the applicable missing data procedures in § 75.31 or § 75.33 shall be used from the date and hour of receipt of the disapproval notice back to the hour of the probationary calibration error test that began the recertification test period. Data from the monitoring system remain invalid until a subsequent probationary calibration error test is passed, beginning a new recertification test period. The owner or operator shall repeat all recertification tests or other requirements, as indicated in the Administrator's notice of disapproval, no later than 30 unit operating days after the date of issuance of the notice of disapproval. The designated representative shall submit a notification of the recertification retest dates, as specified in § 75.61(a)(1)(ii), and shall submit a new recertification application according to the procedures in paragraph (b)(4) of this section.

(c) *Initial certification and recertification procedures.* Prior to the deadline in § 75.4, the owner or operator shall conduct initial certification tests and in accordance with § 75.63, the designated representative shall submit an application to demonstrate that the continuous emission or opacity monitoring system and components thereof meet the specifications in appendix A to this part. The owner or operator shall compare reference method values with output from the automated data acquisition and handling system that is part of the continuous emission monitoring system being tested. Except as specified in paragraphs (b)(1), (d), and (e) of this section, the owner or operator shall perform the following tests for initial certification or recertification of continuous emission or opacity monitoring systems or components according to the requirements of appendix A to this part:

(1) For each SO_2 pollutant concentration monitor, each NO_X concentration monitoring system used to determine NO_X mass emissions, as

defined under § 75.71(a)(2), and for each NO_X-diluent continuous emission monitoring system:

(i) A 7-day calibration error test, where, for the NO_X-diluent continuous emission monitoring system, the test is performed separately on the NO_X pollutant concentration monitor and the diluent gas monitor;

(ii) A linearity check, where, for the NO_X-diluent continuous emission monitoring system, the test is performed separately on the NO_X pollutant concentration monitor and the diluent gas monitor;

(iii) A relative accuracy test audit. For the NO_X-diluent continuous emission monitoring system, the RATA shall be done on a system basis, in units of lb/mmBtu. For the NO_X concentration monitoring system, the RATA shall be done on a ppm basis.

* * * * *

(3) The initial certification test data from an O_2 or a CO_2 diluent gas monitor certified for use in a NO_X continuous emission monitoring system may be submitted to meet the requirements of paragraph (c)(4) of this section. Also, for a diluent monitor that is used both as a CO_2 monitoring system and to determine heat input, only one set of diluent monitor certification data need be submitted (under the component and system identification numbers of the CO_2 monitoring system).

(4) For each CO_2 pollutant concentration monitor, each O_2 monitor which is part of a CO_2 continuous emission monitoring system, each diluent monitor used to monitor heat input and each SO_2-diluent continuous emission monitoring system:

* * * * *

(5) For each continuous moisture monitoring system consisting of wet- and dry-basis O_2 analyzers:

(i) A 7-day calibration error test of each O_2 analyzer;

(ii) A cycle time test of each O_2 analyzer;

(iii) A linearity test of each O_2 analyzer; and

(iv) A RATA, directly comparing the percent moisture measured by the monitoring system to a reference method.

(6) For each continuous moisture sensor: A RATA, directly comparing the percent moisture measured by the monitor sensor to a reference method.

(7) For a continuous moisture monitoring system consisting of a temperature sensor and a data acquisition and handling system (DAHS) software component programmed with a moisture lookup table:

(i) A demonstration that the correct moisture value for each hour is being taken from the moisture lookup tables and applied to the emission calculations. At a minimum, the demonstration shall be made at three different temperatures covering the normal range of stack temperatures from low to high.

(ii) [Reserved]

(8) The owner or operator shall ensure that initial certification or recertification of a continuous opacity monitor for use under the Acid Rain Program is conducted according to one of the following procedures:

(i) Performance of the tests for initial certification or recertification, according to the requirements of Performance Specification 1 in appendix B to part 60 of this chapter; or

* * * * *

(10) The owner or operator shall provide adequate facilities for initial certification or recertification testing that include:

* * * * *

(d) *Initial certification and recertification and quality assurance procedures for optional backup continuous emission monitoring systems.* (1) *Redundant backups.* The owner or operator of an optional redundant backup CEMS shall comply with all the requirements for initial certification and recertification according to the procedures specified in paragraphs (a), (b), and (c) of this section. The owner or operator shall operate the redundant backup CEMS during all periods of unit operation, except for periods of calibration, quality assurance, maintenance, or repair. The owner or operator shall perform upon the redundant backup CEMS all quality assurance and quality control procedures specified in appendix B to this part, except that the daily assessments in section 2.1 of appendix B to this part are optional for days on which the redundant backup CEMS is not used to report emission data under this part. For any day on which a redundant backup CEMS is used to report emission data, the system must meet all of the applicable daily assessment criteria in appendix B to this part.

(2) *Non-redundant backups.* The owner or operator of an optional non-redundant backup CEMS or like-kind replacement analyzer shall comply with all of the following requirements for initial certification, quality assurance, recertification, and data reporting:

(i) Except as provided in paragraph (d)(2)(v) of this section, for a regular non-redundant backup CEMS (i.e., a non-redundant backup CEMS that has its own separate probe, sample interface, and analyzer), or a non-redundant backup flow monitor, all of the tests in paragraph (c) of this section are required for initial certification of the system, except for the 7-day calibration error test.

(ii) For a like-kind replacement non-redundant backup analyzer (i.e., a non-redundant backup analyzer that uses the same probe and sample interface as a primary monitoring system), no initial certification of the analyzer is required. A non-redundant backup analyzer, connected to the same probe and interface as a primary CEMS in order to satisfy the dual span requirements of section 2.1.1.4 or 2.1.2.4 of appendix A to this part, shall be treated in the same manner as a like-kind replacement analyzer.

(iii) Each non-redundant backup CEMS or like-kind replacement analyzer shall comply with the daily and quarterly quality assurance and quality control requirements in appendix B to this part for each day and quarter that the non-redundant backup CEMS or like-kind replacement analyzer is used to report data, and shall meet the additional linearity and calibration error test requirements specified in this paragraph. The owner or operator shall ensure that each non-redundant backup CEMS or like-kind replacement analyzer passes a linearity check (for pollutant concentration and diluent gas monitors) or a calibration error test (for flow monitors) prior to each use for recording and reporting emissions. For a primary NO_X-diluent or SO_2-diluent CEMS consisting of the primary pollutant analyzer and a like-kind replacement diluent analyzer (or vice-versa), provided that the primary pollutant or diluent analyzer (as applicable) is operating and is not out-of-control with respect to any of its quality assurance requirements, only the like-kind replacement analyzer must pass a linearity check before the system is used for data reporting. When a non-redundant backup CEMS or like-kind replacement analyzer is brought into service, prior to conducting the linearity test, a probationary calibration error test (as described in paragraph (b)(3)(ii) of this section), which will begin a period of conditionally valid data, may be performed in order to allow the validation of data retrospectively, as follows. Conditionally valid data from the CEMS or like-kind replacement analyzer are validated back to the hour of completion of the probationary calibration error test if the following conditions are met: if no adjustments are made to the CEMS or like-kind

replacement analyzer other than the allowable calibration adjustments specified in section 2.1.3 of appendix B to this part between the probationary calibration error test and the successful completion of the linearity test; and if the linearity test is passed within 168 unit (or stack) operating hours of the probationary calibration error test. However, if the linearity test is either failed, aborted due to a problem with the CEMS or like-kind replacement analyzer, or is not completed as required, then all of the conditionally valid data are invalidated back to the hour of the probationary calibration error test, and data from the non-redundant backup CEMS or from the primary monitoring system of which the like-kind replacement analyzer is a part remain invalid until the hour of completion of a successful linearity test.

(iv) When data are reported from a non-redundant backup CEMS or like-kind replacement analyzer, the appropriate bias adjustment factor shall be determined as follows:

(A) For a regular non-redundant backup CEMS, as described in paragraph (d)(2)(i) of this section, apply the bias adjustment factor from the most recent RATA of the non-redundant backup system (even if that RATA was done more than 12 months previously); or

(B) When a like-kind replacement non-redundant backup analyzer is used as a component of a primary CEMS (as described in paragraph (d)(2)(ii) of this section), apply the primary monitoring system bias adjustment factor.

(v) For each parameter monitored (i.e., SO_2, CO_2, NO_X or flow rate) at each unit or stack, a regular non-redundant backup CEMS may not be used to report data at that affected unit or common stack for more than 720 hours in any one calendar year, unless the CEMS passes a RATA at that unit or stack. For each parameter monitored (SO_2, CO_2 or NO_X) at each unit or stack, the use of a like-kind replacement non-redundant backup analyzer (or analyzers) is restricted to 720 cumulative hours per calendar year, unless the owner or operator redesignates the like-kind replacement analyzer(s) as component(s) of regular non-redundant backup CEMS and each redesignated CEMS passes a RATA at that unit or stack.

(vi) For each regular non-redundant backup CEMS, no more than eight successive calendar quarters shall elapse following the quarter in which the last RATA of the CEMS was done at a particular unit or stack, without performing a subsequent RATA. Otherwise, the CEMS may not be used to report data from that unit or stack until the hour of completion of a passing RATA at that location.

(vii) Each regular non-redundant backup CEMS shall be represented in the monitoring plan required under § 75.53 as a separate monitoring system, with unique system and component identification numbers. When like-kind replacement non-redundant backup analyzers are used, the owner or operator shall represent each like-kind replacement analyzer used during a particular calendar quarter in the monitoring plan required under § 75.53 as a component of a primary monitoring system. The owner or operator shall also assign a unique component identification number to each like-kind replacement analyzer and specify the manufacturer, model and serial number of the like-kind replacement analyzer. This information may be added, deleted or updated as necessary, from quarter to quarter. The owner or operator shall also report data from the like-kind replacement analyzer using the system identification number of the primary monitoring system and the assigned component identification number of the like-kind replacement analyzer. For the purposes of the electronic quarterly report required under § 75.64, the owner or operator may manually enter the appropriate component identification number(s) of any like-kind replacement analyzer(s) used for data reporting during the quarter.

(viii) When reporting data from a certified regular non-redundant backup CEMS, use a method of determination (MODC) code of ''02.'' When reporting data from a like-kind replacement non-redundant backup analyzer, use a MODC of ''17'' (see Table 4a under § 75.57). For the purposes of the electronic quarterly report required under § 75.64, the owner or operator may manually enter the required MODC of ''17'' for a like-kind replacement analyzer.

* * * * *

(g) *Initial certification and recertification procedures for excepted monitoring systems under appendices D and E.* The owner or operator of a gas-fired unit, oil-fired unit, or diesel-fired unit using the optional protocol under appendix D or E to this part shall ensure that an excepted monitoring system under appendix D or E to this part meets the applicable general operating requirements of § 75.10, the applicable requirements of appendices D and E to this part, and the initial certification or recertification requirements of this paragraph.

(1) *Initial certification and recertification testing.* The owner or operator shall use the following procedures for initial certification and recertification of an excepted monitoring system under appendix D or E to this part.

(i) When the optional SO_2 mass emissions estimation procedure in appendix D to this part or the optional NO_X emissions estimation protocol in appendix E to this part is used, the owner or operator shall provide data from a flowmeter accuracy test (or shall provide a statement of calibration if the flowmeter meets the accuracy standard by design) for each fuel flowmeter, according to section 2.1.5.1 of appendix D to this part.

* * * * *

(2) *Initial certification and recertification testing notification.* The designated representative shall provide initial certification testing notification and routine periodic retesting notification for an excepted monitoring system under appendix E to this part as specified in § 75.61. The designated representative shall also submit recertification testing notification, as specified in § 75.61, for quality assurance related NO_X emission rate re-testing under section 2.3 of appendix E to this part for an excepted monitoring system under appendix E to this part. Initial certification testing notification or periodic retesting notification is not required for testing of a fuel flowmeter or for testing of an excepted monitoring system under appendix D to this part.

* * * * *

(4) *Initial certification or recertification application.* The designated representative shall submit an initial certification or recertification application in accordance with §§ 75.60 and 75.63.

(5) *Provisional approval of initial certification and recertification applications.* Upon the successful completion of the required initial certification or recertification procedures for each excepted monitoring system under appendix D or E to this part, each excepted monitoring system under appendix D or E to this part shall be deemed provisionally certified for use under the Acid Rain Program during the period for the Administrator's review. The provisions for the initial certification or recertification application formal approval process in paragraph (a)(4) of this section shall apply, except that the term ''excepted monitoring system'' shall apply rather than ''continuous emission or opacity monitoring system'' and except that the procedures for loss

of certification in paragraph (g)(7) of this section shall apply rather than the procedures for loss of certification in either paragraph (a)(5) or (b)(5) of this section. Data measured and recorded by a provisionally certified excepted monitoring system under appendix D or E to this part will be considered quality assured data from the date and time of completion of the last initial certification or recertification test, provided that the Administrator does not revoke the provisional certification or recertification by issuing a notice of disapproval in accordance with the provisions in paragraph (a)(4) or (b)(5) of this section.

(6) *Recertification requirements.* Recertification of an excepted monitoring system under appendix D or E to this part is required for any modification to the system or change in operation that could significantly affect the ability of the system to accurately account for emissions and for which the Administrator determines that an accuracy test of the fuel flowmeter or a retest under appendix E to this part to re-establish the NO_X correlation curve is required. Examples of such changes or modifications include fuel flowmeter replacement, changes in unit configuration, or exceedance of operating parameters.

(7) *Procedures for loss of certification or recertification for excepted monitoring systems under appendices D and E to this part.* In the event that a certification or recertification application is disapproved for an excepted monitoring system, data from the monitoring system are invalidated, and the applicable missing data procedures in section 2.4 of appendix D or section 2.5 of appendix E to this part shall be used from the date and hour of receipt of such notice back to the hour of the provisional certification. Data from the excepted monitoring system remain invalid until all required tests are repeated and the excepted monitoring system is again provisionally certified. The owner or operator shall repeat all certification or recertification tests or other requirements, as indicated in the Administrator's notice of disapproval, no later than 30 unit operating days after the date of issuance of the notice of disapproval. The designated representative shall submit a notification of the certification or recertification retest dates if required under paragraph (g)(2) of this section and shall submit a new certification or recertification application according to the procedures in paragraph (g)(4) of this section.

(h) * * *

(2) *Certification application.* The designated representative shall submit a certification application in accordance with § 75.63(a)(1)(iii).

* * * * *

20. Section 75.21 is amended by:

a. Revising paragraphs (a)(2), (a)(4), (a)(5), (a)(6), and (e);

b. Redesignating existing paragraphs (a)(7) and (a)(8) as paragraphs (a)(9) and (a)(10), respectively; and revising newly designated paragraphs (a)(9) and (a)(10); and

c. Adding new paragraphs (a)(7) and (a)(8) to read as follows:

§ 75.21 Quality assurance and quality control requirements.

(a) * * *

(2) The owner or operator shall ensure that each non-redundant backup CEMS meets the quality assurance requirements of § 75.20(d) for each day and quarter that the system is used to report data.

* * * * *

(4) The owner or operator of a unit with an SO_2 continuous emission monitoring system is not required to perform the daily or quarterly assessments of the SO_2 monitoring system under appendix B to this part on any day or in any calendar quarter in which only gaseous fuel is combusted in the unit if, during those days and calendar quarters, SO_2 emissions are determined in accordance with § 75.11(e)(1) or (e)(2). However, such assessments are permissible, and if any daily calibration error test or linearity test of the SO_2 monitoring system is failed while the unit is combusting only gaseous fuel, the SO_2 monitoring system shall be considered out-of-control. The length of the out-of-control period shall be determined in accordance with the applicable procedures in section 2.1.4 or 2.2.3 of appendix B to this part.

(5) For a unit with an SO_2 continuous monitoring system, in which gaseous fuel that is very low sulfur fuel (as defined in § 72.2 of this chapter) is sometimes burned as a primary or backup fuel and in which higher-sulfur fuel(s) such as oil or coal are, at other times, burned as primary or backup fuel(s), the owner shall perform the relative accuracy test audits of the SO_2 monitoring system (as required by section 6.5 of appendix A to this part and section 2.3.1 of appendix B to this part) only when the higher-sulfur fuel is combusted in the unit and shall not perform SO_2 relative accuracy test audits when the very low sulfur gaseous fuel is the only fuel being combusted.

(6) If the designated representative certifies that a unit with an SO_2 monitoring system burns only very low sulfur fuel (as defined in § 72.2 of this chapter), the SO_2 monitoring system is exempted from the relative accuracy test audit requirements in appendices A and B to this part.

(7) If the designated representative certifies that a particular unit with an SO_2 monitoring system combusts primarily fuel(s) that are very low sulfur fuel(s) (as defined in § 72.2 of this chapter), and combusts higher sulfur fuel (s) only as emergency backup fuel(s) or for short-term testing, the SO_2 monitoring system shall be exempted from the RATA requirements of appendices A and B to this part in any calendar year that the unit combusts the higher-sulfur fuel(s) for no more than 480 hours. If, in a particular calendar year, the higher-sulfur fuel usage exceeds 480 hours, the owner or operator shall perform a RATA of the SO_2 monitor (while combusting the higher-sulfur fuel) either by the end of the calendar quarter in which the exceedance occurs or by the end of a 720 unit (or stack) operating hour grace period (under section 2.3.3 of appendix B to this part) following the quarter in which the exceedance occurs.

(8) On and after April 1, 2000, the quality assurance provisions of §§ 75.11(e)(3)(i) through 75.11(e)(3)(iv) shall apply to all units with SO_2 monitoring systems during hours in which only very low sulfur fuel (as defined in § 72.2 of this chapter) is combusted in the unit.

(9) Provided that a unit with an SO_2 monitoring system is not exempted under paragraphs (a)(6) or (a)(7) of this section from the SO_2 RATA requirements of this part, any calendar quarter during which a unit combusts only very low sulfur fuel (as defined in § 72.2 of this chapter) shall be excluded in determining the quarter in which the next relative accuracy test audit must be performed for the SO_2 monitoring system. However, no more than eight successive calendar quarters shall elapse after a relative accuracy test audit of an SO_2 monitoring system, without a subsequent relative accuracy test audit having been performed. The owner or operator shall ensure that a relative accuracy test audit is performed, in accordance with paragraph (a)(5) of this section, either by the end of the eighth successive elapsed calendar quarter since the last RATA or by the end of a 720 unit (or stack) operating hour grace period, as provided in section 2.3.3 of appendix B to this part.

(10) The owner or operator who, in accordance with § 75.11(e)(1), uses a certified flow monitor and a certified diluent monitor and Equation F–23 in appendix F to this part to calculate SO_2

emissions during hours in which a unit combusts only natural gas or pipeline natural gas (as defined in § 72.2 of this chapter) shall meet all quality control and quality assurance requirements in appendix B to this part for the flow monitor and the diluent monitor.

* * * * *

(e) *Consequences of audits.* The owner or operator shall invalidate data from a continuous emission monitoring system or continuous opacity monitoring system upon failure of an audit under appendix B to this part or any other audit, beginning with the unit operating hour of completion of a failed audit as determined by the Administrator. The owner or operator shall not use invalidated data for reporting either emissions or heat input, nor for calculating monitor data availability.

(1) *Audit decertification.* Whenever both an audit of a continuous emission or opacity monitoring system (or component thereof, including the data acquisition and handling system), of any excepted monitoring system under appendix D or E to this part, or of any alternative monitoring system under subpart E of this part, and a review of the initial certification application or of a recertification application, reveal that any system or component should not have been certified or recertified because it did not meet a particular performance specification or other requirement of this part, both at the time of the initial certification or recertification application submission and at the time of the audit, the Administrator will issue a notice of disapproval of the certification status of such system or component. For the purposes of this paragraph, an audit shall be either a field audit of the facility or an audit of any information submitted to EPA or the State agency regarding the facility. By issuing the notice of disapproval, the certification status is revoked prospectively by the Administrator. The data measured and recorded by each system shall not be considered valid quality-assured data from the date of issuance of the notification of the revoked certification status until the date and time that the owner or operator completes subsequently approved initial certification or recertification tests. The owner or operator shall follow the procedures in § 75.20(a)(5) for initial certification or § 75.20(b)(5) for recertification to replace, prospectively, all of the invalid, non-quality-assured data for each disapproved system.

(2) *Out-of-control period.* Whenever a continuous emission monitoring system or continuous opacity monitoring system fails a quality assurance audit or any another audit, the system is out-of-control. The owner or operator shall follow the procedures for out-of-control periods in § 75.24.

21. Section 75.22 is amended by adding a sentence to the end of the introductory text of paragraph (a) and by revising paragraphs (a)(2), (a)(4), (b)(4) and the introductory text of paragraph (c)(1) to read as follows:

§ 75.22 Reference test methods.

(a) * * * Unless otherwise specified in this part, use only codified versions of Methods 3A, 4, 6C and 7E revised as of July 1, 1995 or July 1, 1996 or July 1, 1997.

* * * * *

(2) Method 2 or its allowable alternatives, as provided in appendix A to part 60 of this chapter, except for Methods 2B and 2E, are the reference methods for determination of volumetric flow.

* * * * *

(4) Method 4 (either the standard procedure described in section 2 of the method or the moisture approximation procedure described in section 3 of the method) shall be used to correct pollutant concentrations from a dry basis to a wet basis (or from a wet basis to a dry basis) and shall be used when relative accuracy test audits of continuous moisture monitoring systems are conducted. For the purpose of determining the stack gas molecular weight, however, the alternative techniques for approximating the stack gas moisture content described in section 1.2 of Method 4 may be used in lieu of the procedures in sections 2 and 3 of the method.

* * * * *

(b) * * *

(4) Method 2, or its allowable alternatives, as provided in appendix A to part 60 of this chapter, except for Methods 2B and 2E, for determining volumetric flow. The sample point(s) for reference methods shall be located according to the provisions of section 6.5.5 of appendix A to this part.

(c)(1) Instrumental EPA Reference Methods 3A, 6C, 7E, and 20 shall be conducted using calibration gases as defined in section 5 of appendix A to this part. Otherwise, performance tests shall be conducted and data reduced in accordance with the test methods and procedures of this part unless the Administrator:

* * * * *

22. Section 75.24 is amended by revising the section title and by revising paragraph (d) to read as follows:

§ 75.24 Out-of-control periods and adjustment for system bias.

* * * * *

(d) When the bias test indicates that an SO_2 monitor, a flow monitor, a NO_X-diluent continuous emission monitoring system or a NO_X concentration monitoring system used to determine NO_X mass emissions, as defined in § 75.71(a)(2), is biased low (i.e., the arithmetic mean of the differences between the reference method value and the monitor or monitoring system measurements in a relative accuracy test audit exceed the bias statistic in section 7 of appendix A to this part), the owner or operator shall adjust the monitor or continuous emission monitoring system to eliminate the cause of bias such that it passes the bias test or calculate and use the bias adjustment factor as specified in section 2.3.4 of appendix B to this part.

* * * * *

Subpart D—Missing Data Substitution Procedures

23. Section 75.30 is amended by revising paragraphs (a)(3) and (a)(4), adding new paragraphs (a)(5) and (a)(6), revising the first sentence of paragraph (b) and revising paragraph (d) to read as follows:

§ 75.30 General provisions.

(a) * * *

(3) A valid, quality-assured hour of NO_X emission rate data (in lb/mmBtu) has not been measured or recorded for an affected unit, either by a certified NO_X-diluent continuous emission monitoring system or by an approved alternative monitoring system under subpart E of this part; or

(4) A valid, quality-assured hour of CO_2 concentration data (in percent CO_2, or percent O_2 converted to percent CO_2 using the procedures in appendix F to this part) has not been measured and recorded for an affected unit, either by a certified CO_2 continuous emission monitoring system or by an approved alternative monitoring method under subpart E of this part; or

(5) A valid, quality-assured hour of NO_X concentration data (in ppm) has not been measured or recorded for an affected unit, either by a certified NO_X concentration monitoring system used to determine NO_X mass emissions, as defined in § 75.71(a)(2), or by an approved alternative monitoring system under subpart E of this part; or

(6) A valid, quality-assured hour of CO_2 or O_2 concentration data (in percent CO_2, or percent O_2) used for the determination of heat input has not been measured and recorded for an

affected unit, either by a certified CO_2 or O_2 diluent monitor, or by an approved alternative monitoring method under subpart E of this part.

(b) However, the owner or operator shall have no need to provide substitute data according to the missing data procedures in this subpart if the owner or operator uses SO_2, CO_2, NO_X, or O_2 concentration, flow rate, or NO_X emission rate data recorded from either a certified redundant or regular non-redundant backup CEMS, a like-kind replacement non-redundant backup analyzer, or a backup reference method monitoring system when the certified primary monitor is not operating or is out-of-control. * * *

* * * * *

(d) The owner or operator shall comply with the applicable provisions of this paragraph during hours in which a unit with an SO_2 continuous emission monitoring system combusts only gaseous fuel.

(1) Whenever a unit with an SO_2 CEMS combusts only natural gas or pipeline natural gas (as defined in § 72.2 of this chapter) and the owner or operator is using the procedures in section 7 of appendix F to this part to determine SO_2 mass emissions pursuant to § 75.11(e)(1), the owner or operator shall, for purposes of reporting heat input data under § 75.54(b)(5) or § 75.57(b)(5), as applicable, and for the calculation of SO_2 mass emissions using Equation F–23 in section 7 of appendix F to this part, substitute for missing data from a flow monitoring system, CO_2 diluent monitor or O_2 diluent monitor using the missing data substitution procedures in § 75.36.

(2) Whenever a unit with an SO_2 CEMS combusts gaseous fuel and the owner or operator uses the gas sampling and analysis and fuel flow procedures in appendix D to this part to determine SO_2 mass emissions pursuant to § 75.11(e)(2), the owner or operator shall substitute for missing total sulfur content, gross calorific value, and fuel flowmeter data using the missing data procedures in appendix D to this part and shall also, for purposes of reporting heat input data under § 75.54(b)(5) or § 75.57(b)(5), as applicable, substitute for missing data from a flow monitoring system, CO_2 diluent monitor, or O_2 diluent monitor using the missing data substitution procedures in § 75.36.

(3) The owner or operator of a unit with an SO_2 monitoring system shall not include hours when the unit combusts only gaseous fuel in the SO_2 data availability calculations in § 75.32 or in the calculations of substitute SO_2 data using the procedures of either § 75.31 or § 75.33, for hours when SO_2 emissions are determined in accordance with § 75.11(e)(1) or (e)(2). For the purpose of the missing data and availability procedures for SO_2 pollutant concentration monitors in §§ 75.31 and 75.33 only, all hours during which the unit combusts only gaseous fuel shall be excluded from the definition of ''monitor operating hour,'' ''quality assured monitor operating hour,'' ''unit operating hour,'' and ''unit operating day,'' when SO_2 emissions are determined in accordance with § 75.11(e)(1) or (e)(2).

(4) During all hours in which a unit with an SO_2 continuous emission monitoring system combusts only gaseous fuel and the owner or operator uses the SO_2 monitoring system to determine SO_2 mass emissions pursuant to § 75.11(e)(3), the owner or operator shall determine the percent monitor data availability for SO_2 in accordance with § 75.32 and shall use the standard SO_2 missing data procedures of § 75.33.

24. Section 75.31 is revised to read as follows:

§ 75.31 Initial missing data procedures.

(a) During the first 720 quality-assured monitor operating hours following initial certification (i.e., the date and time at which quality assured data begins to be recorded by the CEMS) of an SO_2 pollutant concentration monitor, or a CO_2 pollutant concentration monitor (or an O_2 monitor used to determine CO_2 concentration in accordance with appendix F to this part), or an O_2 or CO_2 diluent monitor used to calculate heat input or a moisture monitoring system, and during the first 2,160 quality-assured monitor operating hours following initial certification of a flow monitor, or a NO_X-diluent monitoring system, or a NO_X concentration monitoring system used to determine NO_X mass emissions, the owner or operator shall provide substitute data required under this subpart according to the procedures in paragraphs (b) and (c) of this section. The owner or operator of a unit shall use these procedures for no longer than three years (26,280 clock hours) following initial certification.

(b) *SO_2, CO_2, or O_2 concentration data and moisture data.* For each hour of missing SO_2 or CO_2 pollutant concentration data (including CO_2 data converted from O_2 data using the procedures in appendix F of this part), or missing O_2 or CO_2 diluent concentration data used to calculate heat input, or missing moisture data, the owner or operator shall calculate the substitute data as follows:

(1) Whenever prior quality-assured data exist, the owner or operator shall substitute, by means of the data acquisition and handling system, for each hour of missing data, the average of the hourly SO_2, CO_2 or O_2 concentrations or moisture percentages recorded by a certified monitor for the unit operating hour immediately before and the unit operating hour immediately after the missing data period.

(2) Whenever no prior quality assured SO_2, CO_2 or O_2 concentration data or moisture data exist, the owner or operator shall substitute, as applicable, for each hour of missing data, the maximum potential SO_2 concentration or the maximum potential CO_2 concentration or the minimum potential O_2 concentration or (unless Equation 19–3, 19–4 or 19–8 in Method 19 in appendix A to part 60 of this chapter is used to determine NO_X emission rate) the minimum potential moisture percentage, as specified, respectively, in sections 2.1.1.1, 2.1.3.1, 2.1.3.2 and 2.1.5 of appendix A to this part. If Equation 19–3, 19–4 or 19–8 in Method 19 in appendix A to part 60 of this chapter is used to determine NO_X emission rate, substitute the maximum potential moisture percentage, as specified in section 2.1.6 of appendix A to this part.

(c) *Volumetric flow and NO_X emission rate or* NO_X concentration data. For each hour of missing volumetric flow rate data, NO_X emission rate data or NO_X concentration data used to determine NO_X mass emissions:

(1) Whenever prior quality-assured data exist in the load range corresponding to the operating load at the time the missing data period occurred, the owner or operator shall substitute, by means of the automated data acquisition and handling system, for each hour of missing data, the average hourly flow rate or NO_X emission rate or NO_X concentration recorded by a certified monitoring system. The average flow rate (or NO_X emission rate or NO_X concentration) shall be the arithmetic average of all data in the corresponding load range as determined using the procedure in appendix C to this part.

(2) Whenever no prior quality-assured flow or NO_X emission rate or NO_X concentration data exist for the corresponding load range, the owner or operator shall substitute, for each hour of missing data, the average hourly flow rate or the average hourly NO_X emission rate or NO_X concentration at the next higher level load range for which quality-assured data are available.

(3) Whenever no prior quality assured flow rate or NO_X emission rate or NO_X concentration data exist for the corresponding load range, or any higher load range, the owner or operator shall, as applicable, substitute, for each hour of missing data, the maximum potential flow rate as specified in section 2.1.4.1 of appendix A to this part or shall substitute the maximum potential NO_X emission rate or the maximum potential NO_X concentration, as specified in section 2.1.2.1 of appendix A to this part.

25. Section 75.32 is amended by revising paragraph (a) introductory text and revising the last sentence in paragraph (a)(3) to read as follows:

§ 75.32 Determination of monitor data availability for standard missing data procedures.

(a) Following initial certification (i.e., the date and time at which quality assured data begins to be recorded by the CEMS), upon completion of: the first 720 quality-assured monitor operating hours of an SO_2 pollutant concentration monitor, or a CO_2 pollutant concentration monitor (or O_2 monitor used to determine CO_2 concentration), or an O_2 or CO_2 diluent monitor used to calculate heat input or a moisture monitoring system; or the first 2,160 quality-assured monitor operating hours of a flow monitor or a NO_X-diluent monitoring system or a NO_X concentration monitoring system, the owner or operator shall calculate and record, by means of the automated data acquisition and handling system, the percent monitor data availability for the SO_2 pollutant concentration monitor, the CO_2 pollutant concentration monitor, the O_2 or CO_2 diluent monitor used to calculate heat input, the moisture monitoring system, the flow monitor, the NO_X-diluent monitoring system and the NO_X concentration monitoring system as follows:

* * * * *

(3) * * * The owner or operator of a unit with an SO_2 monitoring system shall, when SO_2 emissions are determined in accordance with § 75.11(e)(1) or (e)(2), exclude hours in which a unit combusts only gaseous fuel from calculations of percent monitor data availability for SO_2 pollutant concentration monitors, as provided in § 75.30(d).

* * * * *

26. Section 75.33 is amended by revising the title of the section, by revising paragraphs (a), (b)(3) and (c), and adding a new paragraph (b)(4) to read as follows:

§ 75.33 Standard missing data procedures for SO_2, NO_X and flow rate.

(a) Following initial certification (i.e., the date and time at which quality assured data begins to be recorded by the CEMS) and upon completion of the first 720 quality-assured monitor operating hours of the SO_2 pollutant concentration monitor or the first 2,160 quality assured monitor operating hours of the flow monitor, NO_X-diluent monitoring system or NO_X concentration monitoring system used to determine NO_X mass emissions, the owner or operator shall provide substitute data required under this subpart according to the procedures in paragraphs (b) and (c) of this section and depicted in Table 1 (SO_2) and Table 2 of this sectioin (NO_X, flow). The owner or operator of a unit shall substitute for missing data using only quality-assured monitor operating hours of data from the three years (26,280 clock hours) prior to the date and time of the missing data period.

TABLE 1.—MISSING DATA PROCEDURE FOR SO_2 CEMS, CO_2 CEMS, MOISTURE CEMS AND DILUENT (CO_2 or O_2) MONITORS FOR HEAT INPUT DETERMINATION

Trigger conditions		Calculation routines	
Monitor data availability (percent)	Duration (N) of CEMS outage (hours) [2]	Method	Lookback period
95 or more	N ≤ 24	Average	HB/HA.
	N > 24	For SO_2, CO_2 and H_2O**, the greater of:	
		Average	HB/HA.
		90th percentile	720 hours.*
		For O_2, and H_2O^X, the lesser of:	
		Average	HB/HA.
		10th percentile	720 hours.*
90 or more, but below 95	N ≤ 8	Average	HB/HA.
	N > 8	For SO_2, CO_2 and H_2O**, the greater of:	
		Average	HB/HA.
		95th percentile	720 hours.*
		For O_2, and H_2O^X, the lesser of:	
		Average	HB/HA.
		5th percentile	720 hours.*
80 or more, but below 90	N > 0	For SO_2, CO_2 and H_2O**,	
		Maximum value [1]	720 hours.*
		For O_2, and H_2O^X:	
		Minimum value[1]	720 hours.*
Below 80	N > 0	Maximum potential concentration or % (for SO_2, CO_2 and H_2O**) *or*	
		Minimum potential concentration or % (for O_2, and H_2O^X)	None.

HB/HA = hour before and hour after the CEMS outage.

* = Quality-assured, monitor operating hours, during unit operation.

[1] Where unit with add-on emission controls can demonstrate that the controls are operating properly, as provided in § 75.34, the unit may, upon approval, use the maximum controlled emission rate from the previous 720 operating hours.

[2] During unit operating hours.

[X] Use this algorithm for moisture except when Equation 19–3, 19–4 or 19–8 in Method 19 in appendix A to part 60 of this chapter is used for NO_X emission rate.

** Use this algorithm for moisture *only* when Equation 19–3, 19–4 or 19–8 in Method 19 in appendix A to part 60 of this chapter is used for NO_X emission rate.

TABLE 2.—MISSING DATA PROCEDURE FOR NO_X-Diluent CEMS, NO_X CONCENTRATION CEMS AND FLOW RATE CEMS

Trigger conditions		Calculation routines		
Monitor data availability (percent)	Duration (N) of CEMS outage (hours)[2]	Method	Lookback period	Load ranges
95 or more	N ≤ 24	Average	2160 hours*	Yes.
	N > 24	The greater of:		
		Average	HB/HA	No.
		90th percentile	2160 hours*	Yes.
90 or more, but below 95	N ≤ 8	Average	2160 hours*	Yes.
	N > 8	The greater of:		
		Average	HB/HA	No.
		95th percentile	2160 hours*	Yes.
80 or more, but below 90	N > 0	Maximum value[1]	2160 hours*	Yes.
Below 80	N > 0	Maximum NO_X emission rate; or maximum potential NO_X concentration; or maximum potential flow rate.	None	No.

HB/HA=hour before and hour after the CEMS outage.
*=Quality-assured, monitor operating hours, in the corresponding load range (''load bin'') for each hour of the missing data period.
[1] Where unit with add-on emission controls can demonstrate that the controls are operating properly, as provided in § 75.34, the unit may, upon approval, use the maximum controlled emission rate from the previous 720 operating hours.
[2] During unit operating hours.

(b) * * *

(3) Whenever the monitor data availability is at least 80.0 percent but less than 90.0 percent, the owner or operator shall substitute for each missing data period the maximum hourly SO_2 concentration recorded by an SO_2 pollutant concentration monitor during the previous 720 quality-assured monitor operating hours.

(4) Whenever the monitor data availability is less than 80.0 percent, the owner or operator shall substitute for each missing data period the maximum potential SO_2 concentration, as defined in section 2.1.1.1 of appendix A to this part.

(c) *Volumetric flow rate, NO_X emission rate and NO_X concentration data.* For each hour of missing volumetric flow rate data, NO_X emission rate data, or NO_X concentration data used to determine NO_X mass emissions:

(1) Whenever the monitor or continuous emission monitoring system data availability is equal to or greater than 95.0 percent, the owner or operator shall calculate substitute data by means of the automated data acquisition and handling system for each hour of each missing data period according to the following procedures:

(i) For a missing data period less than or equal to 24 hours, substitute, as applicable, for each missing hour, the arithmetic average of the flow rates or NO_X emission rates or NO_X concentrations recorded by a monitoring system during the previous 2,160 quality assured monitor operating hours at the corresponding unit load range, as determined using the procedure in appendix C to this part.

(ii) For a missing data period greater than 24 hours, substitute, as applicable, for each missing hour, the greater of:

(A) The 90th percentile hourly flow rate or the 90th percentile NO_X emission rate or the 90th percentile NO_X concentration recorded by a monitoring system during the previous 2,160 quality-assured monitor operating hours at the corresponding unit load range, as determined using the procedure in appendix C to this part; or

(B) The average of the recorded hourly flow rates, NO_X emission rates or NO_X concentrations recorded by a monitoring system for the hour before and the hour after the missing data period.

(2) Whenever the monitor or continuous emission monitoring system data availability is at least 90.0 percent but less than 95.0 percent, the owner or operator shall calculate substitute data by means of the automated data acquisition and handling system for each hour of each missing data period according to the following procedures:

(i) For a missing data period of less than or equal to 8 hours, substitute, as applicable, the arithmetic average hourly flow rate or NO_X emission rate or NO_X concentration recorded by a monitoring system during the previous 2,160 quality-assured monitor operating hours at the corresponding unit load range, as determined using the procedure in appendix C to this part.

(ii) For a missing data period greater than 8 hours, substitute, as applicable, for each missing hour, the greater of:

(A) The 95th percentile hourly flow rate or the 95th percentile NO_X emission rate or the 95th percentile NO_X concentration recorded by a monitoring system during the previous 2,160 quality-assured monitor operating hours at the corresponding unit load range, as determined using the procedure in appendix C to this part; or

(B) The average of the hourly flow rates, NO_X emission rates or NO_X concentrations recorded by a monitoring system for the hour before and the hour after the missing data period.

(3) Whenever the monitor data availability is at least 80.0 percent but less than 90.0 percent, the owner or operator shall, by means of the automated data acquisition and handling system, substitute, as applicable, for each hour of each missing data period, the maximum hourly flow rate or the maximum hourly NO_X emission rate or the maximum hourly NO_X concentration recorded during the previous 2,160 quality-assured monitor operating hours at the corresponding unit load range, as determined using the procedure in section 2 of appendix C to this part.

(4) Whenever the monitor data availability is less than 80.0 percent, the owner or operator shall substitute, as applicable, for each hour of each missing data period, the maximum potential flow rate, as defined in section 2.1.4.1 of appendix A to this part, or the maximum NO_X emission rate, as defined in section 2.1.2.1 of appendix A to this part, or the maximum potential NO_X concentration, as defined in section 2.1.2.1 of appendix A to this part.

(5) Whenever no prior quality-assured flow rate data, NO_X concentration data or NO_X emission rate data exist for the corresponding load range, the owner or operator shall substitute, as applicable, for each hour of missing data, the

maximum hourly flow rate or the maximum hourly NO_X concentration or maximum hourly NO_X emission rate at the next higher level load range for which quality-assured data are available.

(6) Whenever no prior quality-assured flow rate data, NO_X concentration data or NO_X emission rate data exist for either the corresponding load range or a higher load range, the owner or operator shall substitute, as applicable, either the maximum potential NO_X emission rate or the maximum potential NO_X concentration, as defined in section 2.1.2.1 of appendix A to this part or the maximum potential flow rate, as defined in section 2.1.4.1 of appendix A to this part.

27–28. Section 75.34 is amended by revising paragraph (a)(3) to read as follows:

§ 75.34 Units with add-on emission controls.

(a) * * *

(3) The designated representative may petition the Administrator under § 75.66 for approval of site-specific parametric monitoring procedure(s) for calculating substitute data for missing SO_2 pollutant concentration, NO_X pollutant concentration, and NO_X emission rate data in accordance with the requirements of paragraphs (b) and (c) of this section and appendix C to this part. The owner or operator shall record the data required in appendix C to this part, pursuant to § 75.55(b) or § 75.58(b), as applicable.

* * * * *

29. Section 75.35 is amended by revising paragraphs (a) and (b) and by adding paragraph (d) to read as follows:

§ 75.35 Missing data procedures for CO_2 data.

(a) On and after April 1, 2000, the owner or operator of a unit with a CO_2 continuous emission monitoring system for determining CO_2 mass emissions in accordance with § 75.10 (or an O_2 monitor that is used to determine CO_2 concentration in accordance with appendix F to this part) shall substitute for missing CO_2 pollutant concentration data using the procedures of paragraphs (b) and (d) of this section. The procedures of paragraphs (b) and (d) of this section shall also be used on and after April 1, 2000 to provide substitute CO_2 data for heat input determination. Prior to April 1, 2000, the owner or operator shall substitute for missing CO_2 data using either the procedures of paragraphs (b) and (c), or paragraphs (b) and (d) of this section.

(b) During the first 720 quality assured monitor operating hours following initial certification (i.e., the date and time at which quality assured data begins to be recorded by the CEMS), of the CO_2 continuous emission monitoring system, or (for a previously certified CO_2 monitoring system) during the 720 quality assured monitor operating hours preceding implementation of the standard missing data procedures in paragraph (d) of this section, the owner or operator shall provide substitute CO_2 pollutant concentration data or substitute CO_2 data for heat input determination, as applicable, according to the procedures in § 75.31(b).

* * * * *

(d) Upon completion of 720 quality assured monitor operating hours using the initial missing data procedures of § 75.31(b), the owner or operator shall provide substitute data for CO_2 concentration data or substitute CO_2 data for heat input determination, as applicable, in accordance with the procedures in § 75.33(b), except that the term ''CO_2 concentration'' shall apply rather than ''SO_2 concentration'' and the term ''CO_2 pollutant concentration monitor'' or ''CO_2 diluent monitor'' shall apply rather than ''SO_2 pollutant concentration monitor.''

30. Section 75.36 is amended by revising the section heading and paragraphs (a), (b) and (d) to read as follows:

§ 75.36 Missing data procedures for heat input determinations.

(a) When hourly heat input is determined using a flow monitoring system and a diluent gas (O_2 or CO_2) monitor, substitute data must be provided to calculate the heat input whenever quality assured data are unavailable from the flow monitor, the diluent gas monitor, or both. When flow rate data are unavailable, substitute flow rate data for the heat input calculation shall be provided according to § 75.31 or § 75.33, as applicable. On and after April 1, 2000, when diluent gas data are unavailable, the owner or operator shall provide substitute O_2 or CO_2 data for the heat input calculations in accordance with paragraphs (b) and (d) of this section. Prior to April 1, 2000, the owner or operator shall substitute for missing CO_2 or O_2 concentration data in accordance with either paragraphs (c) and (d) or paragraphs (b) and (d) of this section.

(b) During the first 720 quality assured monitor operating hours following initial certification (i.e., the date and time at which quality assured data begins to be recorded by the CEMS), or (for a previously certified CO_2 or O_2 monitor) during the 720 quality assured monitor operating hours preceding implementation of the standard missing data procedures in paragraph (d) of this section, the owner or operator shall provide substitute CO_2 or O_2 data, as applicable, for the calculation of heat input (under section 5.2 of appendix F to this part) according to § 75.31(b).

(c) * * *

(d) Upon completion of 720 quality-assured monitor operating hours using the initial missing data procedures of § 75.31(b), the owner or operator shall provide substitute data for CO_2 or O_2 concentration to calculate heat input, as follows. Substitute CO_2 data for heat input determinations shall be provided according to § 75.35(d). Substitute O_2 data for the heat input determinations shall be provided in accordance with the procedures in § 75.33(b), except that the term ''O_2 concentration'' shall apply rather than the term ''SO_2 concentration'' and the term ''O_2 diluent monitor'' shall apply rather than the term ''SO_2 pollutant concentration monitor.'' In addition, the term ''substitute the lesser of'' shall apply rather than ''substitute the greater of;'' the terms ''minimum hourly O_2 concentration'' and ''minimum potential O_2 concentration, as determined under section 2.1.3.2 of appendix A to this part'' shall apply rather than, respectively, the terms ''maximum hourly SO_2 concentration'' and ''maximum potential SO_2 concentration, as determined under section 2.1.1.1 of appendix A to this part;'' and the terms ''10th percentile'' and ''5th percentile'' shall apply rather than, respectively, the terms ''90th percentile'' and ''95th percentile'' (see Table 1 of § 75.33).

31. Section 75.37 is added to subpart D to read as follows:

§ 75.37 Missing data procedures for moisture.

(a) On and after April 1, 2000, the owner or operator of a unit with a continuous moisture monitoring system shall substitute for missing moisture data using the procedures of this section. Prior to April 1, 2000, the owner or operator may substitute for missing moisture data using the procedures of this section.

(b) Where no prior quality assured moisture data exist, substitute the minimum potential moisture percentage, from section 2.1.5 of appendix A to this part, except when Equation 19–3, 19–4 or 19–8 in Method 19 in appendix A to part 60 of this chapter is used to determine NO_X emission rate. If Equation 19–3, 19–4 or 19–8 in Method 19 in appendix A to part 60 of this chapter is used to

determine NO_X emission rate, substitute the maximum potential moisture percentage, as specified in section 2.1.6 of appendix A to this part.

(c) During the first 720 quality assured monitor operating hours following initial certification (i.e., the date and time at which quality assured data begins to be recorded by the moisture monitoring system), the owner or operator shall provide substitute data for moisture according to § 75.31(b).

(d) Upon completion of the first 720 quality-assured monitor operating hours following initial certification of the moisture monitoring system, the owner or operator shall provide substitute data for moisture as follows:

(1) Unless Equation 19–3, 19–4 or 19–8 in Method 19 in appendix A to part 60 of this chapter is used to determine NO_X emission rate, follow the missing data procedures in § 75.33(b), except that the term ''moisture percentage'' shall apply rather than ''SO_2 concentration;'' the term ''moisture monitoring system'' shall apply rather than the term ''SO_2 pollutant concentration monitor;'' the term ''substitute the lesser of'' shall apply rather than ''substitute the greater of;'' the terms ''minimum hourly moisture percentage'' and ''minimum potential moisture percentage, as determined under section 2.1.5 of appendix A to this part'' shall apply rather than, respectively, the terms ''maximum hourly SO_2 concentration'' and ''maximum potential SO_2 concentration, as determined under section 2.1.1.1 of appendix A to this part;'' and the terms ''10th percentile'' and ''5th percentile'' shall apply rather than, respectively, the terms ''90th percentile'' and ''95th percentile'' (see Table 1 of § 75.33).

(2) When Equation 19–3, 19–4 or 19–8 in Method 19 in appendix A to part 60 of this chapter is used to determine NO_X emission rate:

(i) Provided that none of the following equations is used to determine SO_2 emissions, CO_2 emissions or heat input: Equation F–2, F–14b, F–16, F–17, or F–18 in appendix F to this part, or Equation 19–5 or 19–9 in Method 19 in appendix A to part 60 of this chapter, use the missing data procedures in § 75.33(b), except that the term ''moisture percentage'' shall apply rather than ''SO_2 concentration'' and the term ''moisture monitoring system'' shall apply rather than ''SO_2 pollutant concentration monitor;'' or

(ii) If any of the following equations is used to determine SO_2 emissions, CO_2 emissions or heat input: Equation F–2, F–14b, F–16, F–17, or F–18 in appendix F to this part, or Equation 19–5 or 19–9 in Method 19 in appendix A to part 60 of this chapter, the owner or operator shall petition the Administrator under § 75.66(l) for permission to use an alternative moisture missing data procedure.

Subpart E—Alternative Monitoring Systems

32. Section 75.48 is amended by revising paragraphs (a)(3)(ii) and (a)(3)(iii), and correcting paragraphs (a)(3)(iv), (a)(3)(viii), (a)(3)(ix), and (a)(3)(xi) to read as follows:

§ 75.48 Petition for an alternative monitoring system.

(a) * * *

(3) * * *

(ii) Hourly test data for the alternative monitoring system at each required operating level and fuel type. The fuel type, operating level and gross unit load shall be recorded.

(iii) Hourly test data for the continuous emissions monitoring system at each required operating level and fuel type. The fuel type, operating level and gross unit load shall be recorded.

(iv) Arithmetic mean of the alternative monitoring system measurement values, as specified in Equation 25 in § 75.41(c) of this part, of the continuous emission monitoring system values, as specified in Equation 26 in § 75.41(c) of this part, and of their differences.

* * * * *

(viii) Variance of the measured values for the alternative monitoring system and of the measured values for the continuous emission monitoring system, as specified in Equation 23 in § 75.41(c) of this part.

(ix) F-statistic, as specified in Equation 24 in § 75.41(c) of this part.

* * * * *

(xi) Coefficient of correlation, r, as specified in Equation 27 in § 75.41(c) of this part.

* * * * *

Subpart F—Recordkeeping Requirements

§ 75.50 [Removed and Reserved]

33. Section 75.50 is removed and reserved.

§ 75.51 [Removed and Reserved]

34. Section 75.51 is removed and reserved.

§ 75.52 [Removed and Reserved]

35. Section 75.52 is removed and reserved.

§ 75.53 Monitoring plan.

36. Section 75.53 is amended by revising paragraphs (a) and (b), correcting paragraph (c)(1), and adding paragraphs (e) and (f) to read as follows:

(a) *General provisions.* (1) The provisions of paragraphs (c) and (d) of this section shall remain in effect prior to April 1, 2000. The owner or operator shall meet the requirements of either paragraphs (a) through (d) or paragraphs (a), (b), (e) and (f) of this section prior to April 1, 2000. On and after April 1, 2000, the owner or operator shall meet the requirements of paragraphs (a), (b), (e) and (f) of this section only. In addition, the provisions in paragraphs (e) and (f) of this section that support a regulatory option provided in another section of this part must be followed if the regulatory option is used prior to April 1, 2000.

(2) The owner or operator of an affected unit shall prepare and maintain a monitoring plan. Except as provided in paragraphs (d) or (f) of this section (as applicable), a monitoring plan shall contain sufficient information on the continuous emission or opacity monitoring systems, excepted methodology under § 75.19, or excepted monitoring systems under appendix D or E to this part and the use of data derived from these systems to demonstrate that all unit SO_2 emissions, NO_X emissions, CO_2 emissions, and opacity are monitored and reported.

(b) Whenever the owner or operator makes a replacement, modification, or change in the certified CEMS, continuous opacity monitoring system, excepted methodology under § 75.19, excepted monitoring system under appendix D or E to this part, or alternative monitoring system under subpart E of this part, including a change in the automated data acquisition and handling system or in the flue gas handling system, that affects information reported in the monitoring plan (e.g., a change to a serial number for a component of a monitoring system), then the owner or operator shall update the monitoring plan.

(c) * * *

(1) Precertification information, including, as applicable, the identification of the test strategy, protocol for the relative accuracy test audit, other relevant test information, span calculations, and apportionment strategies under §§ 75.10 through 75.18 of this part.

* * * * *

(e) *Contents of the monitoring plan.* Each monitoring plan shall contain the information in paragraph (e)(1) of this section in electronic format and the information in paragraph (e)(2) of this section in hardcopy format. Electronic storage of all monitoring plan

information, including the hardcopy portions, is permissible provided that a paper copy of the information can be furnished upon request for audit purposes.

(1) *Electronic.* (i) ORISPL numbers developed by the Department of Energy and used in the National Allowance Data Base, for all affected units involved in the monitoring plan, with the following information for each unit:

(A) Short name;

(B) Classification of the unit as one of the following: Phase I (including substitution or compensating units), Phase II, new, or nonaffected;

(C) Type of boiler (or boilers for a group of units using a common stack);

(D) Type of fuel(s) fired by boiler, fuel type start and end dates, primary/secondary fuel indicator, and, if more than one fuel, the fuel classification of the boiler;

(E) Type(s) of emission controls for SO_2, NO_X, and particulates installed or to be installed, including specifications of whether such controls are pre-combustion, post-combustion, or integral to the combustion process; control equipment code, installation date, and optimization date; control equipment retirement date (if applicable); and an indicator for whether the controls are an original installation;

(F) Maximum hourly heat input capacity;

(G) Date of first commercial operation;

(H) Unit retirement date (if applicable);

(I) Maximum hourly gross load (in MW, rounded to the nearest MW, or steam load in 1000 lb/hr, rounded to the nearest 100 lb/hr);

(J) Identification of all units using a common stack;

(K) Activation date for the stack/pipe;

(L) Retirement date of the stack/pipe (if applicable); and

(M) Indicator of whether the stack is a bypass stack.

(ii) For each unit and parameter required to be monitored, identification of monitoring methodology information, consisting of monitoring methodology, type of fuel associated with the methodology, primary/secondary methodology indicator, missing data approach for the methodology, methodology start date, and methodology end date (if applicable).

(iii) The following information:

(A) Program(s) for which the EDR is submitted;

(B) Unit classification;

(C) Reporting frequency;

(D) Program participation date;

(E) State regulation code (if applicable); and

(F) State or local regulatory agency code.

(iv) Identification and description of each monitoring component (including each monitor and its identifiable components, such as analyzer and/or probe) in the CEMS (e.g., SO_2 pollutant concentration monitor, flow monitor, moisture monitor; NO_X pollutant concentration monitor and diluent gas monitor), the continuous opacity monitoring system, or the excepted monitoring system (e.g., fuel flowmeter, data acquisition and handling system), including:

(A) Manufacturer, model number and serial number;

(B) Component/system identification code assigned by the utility to each identifiable monitoring component (such as the analyzer and/or probe). Each code shall use a three-digit format, unique to each monitoring component and unique to each monitoring system;

(C) Designation of the component type and method of sample acquisition or operation, (e.g., in situ pollutant concentration monitor or thermal flow monitor);

(D) Designation of the system as a primary, redundant backup, non-redundant backup, data backup, or reference method backup system, as provided in § 75.10(e);

(E) First and last dates the system reported data;

(F) Status of the monitoring component; and

(G) Parameter monitored.

(v) Identification and description of all major hardware and software components of the automated data acquisition and handling system, including:

(A) Hardware components that perform emission calculations or store data for quarterly reporting purposes (provide the manufacturer and model number); and

(B) Software components (provide the identification of the provider and model/version number).

(vi) Explicit formulas for each measured emission parameter, using component/system identification codes for the primary system used to measure the parameter that links CEMS or excepted monitoring system observations with reported concentrations, mass emissions, or emission rates, according to the conversions listed in appendix D or E to this part. Formulas for backup monitoring systems are required only if different formulas for the same parameter are used for the primary and backup monitoring systems (e.g., if the primary system measures pollutant concentration on a different moisture basis from the backup system). The formulas must contain all constants and factors required to derive mass emissions or emission rates from component/system code observations and an indication of whether the formula is being added, corrected, deleted, or is unchanged. Each emissions formula is identified with a unique three digit code. The owner or operator of a low mass emissions unit for which the owner or operator is using the optional low mass emissions excepted methodology in § 75.19(c) is not required to report such formulas.

(vii) Inside cross-sectional area (ft^2) at flue exit (for all units) and at flow monitoring location (for units with flow monitors, only).

(viii) Stack height (ft) above ground level and stack base elevation above sea level.

(ix) Part 75 monitoring location identification, facility identification code as assigned by the Administrator for use under the Acid Rain Program or this part, and the following information, as reported to the Energy Information Administration (EIA): facility identification number, flue identification number, boiler identification number, reporting year, and 767 reporting indicator.

(x) For each parameter monitored: scale, maximum potential concentration (and method of calculation), maximum expected concentration (if applicable) (and method of calculation), maximum potential flow rate (and method of calculation), maximum potential NO_X emission rate, span value, full-scale range, daily calibration units of measure, span effective date/hour, span inactivation date/hour, indication of whether dual spans are required, default high range value, flow rate span, and flow rate span value and full scale value (in scfh) for each unit or stack using SO_2, NO_X, CO_2, O_2, or flow component monitors.

(xi) If the monitoring system or excepted methodology provides for the use of a constant, assumed, or default value for a parameter under specific circumstances, then include the following information for each such value for each parameter:

(A) Identification of the parameter;

(B) Default, maximum, minimum, or constant value, and units of measure for the value;

(C) Purpose of the value;

(D) Indicator of use during controlled/uncontrolled hours;

(E) Type of fuel;

(F) Source of the value;

(G) Value effective date and hour;

(H) Date and hour value is no longer effective (if applicable); and

(I) For units using the excepted methodology under § 75.19, the applicable SO_2 emission factor.

(xii) For each unit or common stack (except for peaking units) on which hardware CEMS are installed:

(A) The upper and lower boundaries of the range of operation (as defined in section 6.5.2.1 of appendix A to this part), expressed in megawatts or thousands of lb/hr of steam;

(B) The load level(s) designated as normal in section 6.5.2.1 of appendix A to this part, expressed in megawatts or thousands of lb/hr of steam;

(C) The two load levels (i.e., low, mid, or high) identified in section 6.5.2.1 of appendix A to this part as the most frequently used;

(D) The date of the load analysis used to determine the normal load level(s) and the two most frequently-used load levels; and

(E) Activation and deactivation dates, when the normal load level(s) or two most frequently-used load levels change and are updated.

(xiii) For each unit for which the optional fuel flow-to-load test in section 2.1.7 of appendix D to this part is used:

(A) The upper and lower boundaries of the range of operation (as defined in section 6.5.2.1 of appendix A to this part), expressed in megawatts or thousands of lb/hr of steam;

(B) The load level designated as normal, pursuant to section 6.5.2.1 of appendix A to this part, expressed in megawatts or thousands of lb/hr of steam; and

(C) The date of the load analysis used to determine the normal load level.

(2) *Hardcopy.* (i) Information, including (as applicable): identification of the test strategy; protocol for the relative accuracy test audit; other relevant test information; calibration gas levels (percent of span) for the calibration error test and linearity check; calculations for determining maximum potential concentration, maximum expected concentration (if applicable), maximum potential flow rate, maximum potential NO_X emission rate, and span; and apportionment strategies under §§ 75.10 through 75.18.

(ii) Description of site locations for each monitoring component in the continuous emission or opacity monitoring systems, including schematic diagrams and engineering drawings specified in paragraphs (e)(2)(iv) and (e)(2)(v) of this section and any other documentation that demonstrates each monitor location meets the appropriate siting criteria.

(iii) A data flow diagram denoting the complete information handling path from output signals of CEMS components to final reports.

(iv) For units monitored by a continuous emission or opacity monitoring system, a schematic diagram identifying entire gas handling system from boiler to stack for all affected units, using identification numbers for units, monitor components, and stacks corresponding to the identification numbers provided in paragraphs (e)(1)(i), (e)(1)(iv), (e)(1)(vi), and (e)(1)(ix) of this section. The schematic diagram must depict stack height and the height of any monitor locations. Comprehensive and/or separate schematic diagrams shall be used to describe groups of units using a common stack.

(v) For units monitored by a continuous emission or opacity monitoring system, stack and duct engineering diagrams showing the dimensions and location of fans, turning vanes, air preheaters, monitor components, probes, reference method sampling ports, and other equipment that affects the monitoring system location, performance, or quality control checks.

(f) *Contents of monitoring plan for specific situations.* The following additional information shall be included in the monitoring plan for the specific situations described:

(1) For each gas-fired unit or oil-fired unit for which the owner or operator uses the optional protocol in appendix D to this part for estimating heat input and/or SO_2 mass emissions, or for each gas-fired or oil-fired peaking unit for which the owner/operator uses the optional protocol in appendix E to this part for estimating NO_X emission rate (using a fuel flowmeter), the designated representative shall include the following additional information in the monitoring plan:

(i) *Electronic.*

(A) Parameter monitored;

(B) Type of fuel measured, maximum fuel flow rate, units of measure, and basis of maximum fuel flow rate (i.e., upper range value or unit maximum) for each fuel flowmeter;

(C) Test method used to check the accuracy of each fuel flowmeter;

(D) Submission status of the data;

(E) Monitoring system identification code; and

(F) For gaseous fuels fired by the unit, the method used to verify that the fuel meets the definition in § 72.2 of pipeline natural gas or natural gas, if applicable, and the demonstration methods used for other gaseous fuels, if applicable, to determine the appropriate frequency for sampling for GCV or sulfur content of the fuel.

(ii) *Hardcopy.* (A) A schematic diagram identifying the relationship between the unit, all fuel supply lines, the fuel flowmeter(s), and the stack(s). The schematic diagram must depict the installation location of each fuel flowmeter and the fuel sampling location(s). Comprehensive and/or separate schematic diagrams shall be used to describe groups of units using a common pipe;

(B) For units using the optional default SO_2 emission rate for ''pipeline natural gas'' or ''natural gas'' in appendix D to this part, the information on the sulfur content of the gaseous fuel used to demonstrate compliance with either section 2.3.1.4 or 2.3.2.4 of appendix D to this part;

(C) For units using the 720 hour test under 2.3.6 of Appendix D of this part to determine the required sulfur sampling requirements, report the procedures and results of the test; and

(D) For units using the 720 hour test under 2.3.5 of Appendix D of this part to determine the appropriate fuel GCV sampling frequency, report the procedures used and the results of the test;

(2) For each gas-fired peaking unit and oil-fired peaking unit for which the owner or operator uses the optional procedures in appendix E to this part for estimating NO_X emission rate, the designated representative shall include in the monitoring plan:

(i) *Electronic.* Unit operating and capacity factor information demonstrating that the unit qualifies as a peaking unit or gas-fired unit, as defined in § 72.2 of this chapter, and NO_X correlation test information, including:

(A) Test date;

(B) Test number;

(C) Operating level;

(D) Segment ID of the NO_X correlation curve;

(E) NO_X monitoring system identification;

(F) Low and high heat input values and corresponding NO_X rates;

(G) Type of fuel; and

(H) To document the unit qualifies as a peaking unit, current calendar year, capacity factor data as specified in the definition of peaking unit in § 72.2 of this part, and an indication of whether the data are actual or projected data.

(ii) *Hardcopy.* (A) A protocol containing methods used to perform the baseline or periodic NO_X emission test; and

(B) Unit operating parameters related to NO_X formation by the unit.

(3) For each gas-fired unit and diesel-fired unit or unit with a wet flue gas pollution control system for which the

designated representative claims an opacity monitoring exemption under § 75.14, the designated representative shall include in the hardcopy monitoring plan the information specified under § 75.14(b), (c), or (d), demonstrating that the unit qualifies for the exemption.

(4) For each monitoring system recertification, maintenance, or other event, the designated representative shall include the following additional information in electronic format in the monitoring plan:

(i) Component/system identification code;

(ii) Event code or code for required test;

(iii) Event begin date and hour;

(iv) Conditionally valid data period begin date and hour (if applicable);

(v) Date and hour that last test is successfully completed; and

(vi) Indicator of whether conditionally valid data were reported at the end of the quarter.

(5) For each unit using the low mass emission excepted methodology under § 75.19 the designated representative shall include the following additional information in the monitoring plan:

(i) *Electronic.* For each low mass emissions unit, report the results of the analysis performed to qualify as a low mass emissions unit under § 75.19(c). This report will include either the previous three years actual or projected emissions and the emissions calculated using the methodology which will be used by the unit to estimate future emissions.

(ii) *Hardcopy.* (A) A schematic diagram identifying the relationship between the unit, all fuel supply lines and tanks, any fuel flowmeter(s), and the stack(s). Comprehensive and/or separate schematic diagrams shall be used to describe groups of units using a common pipe;

(B) For units which use the long term fuel flow methodology under § 75.19(c)(3), the designated representative must provide a diagram of the fuel flow to each affected unit or group of units and describe in detail the procedures used to determine the long term fuel flow for a unit or group of units for each fuel combusted by the unit or group of units;

(C) A statement that the unit burns only natural gas or fuel oil and a list of the fuels that are burned or a statement that the unit is projected to burn only natural gas or fuel oil and a list of the fuels that are projected to be burned;

(D) A statement that the unit meets the applicability requirements in §§ 75.19(a) and (b); and

(E) Any unit historical actual and projected emissions data and calculated emissions data demonstrating that the affected unit qualifies as a low mass emissions unit under §§ 75.19(a) and 75.19(b).

(6) For each gas-fired unit the designated representative shall include in the monitoring plan, in electronic format, the following: current calendar year, fuel usage data as specified in the definition of gas-fired in § 72.2 of this part, and an indication of whether the data are actual or projected data.

37. Section 75.54 is amended by revising paragraph (a) introductory text and paragraph (a)(1), and adding a new paragraph (g) to read as follows:

§ 75.54 General recordkeeping provisions.

(a) *Recordkeeping requirements for affected sources.* On and after January 1, 1996, and before April 1, 2000, the owner or operator shall meet the requirements of either this section or § 75.57. On and after April 1, 2000, the owner or operator shall meet the requirements of § 75.57. The owner or operator of any affected source subject to the requirements of this part shall maintain for each affected unit a file of all measurements, data, reports, and other information required by this part at the source in a form suitable for inspection for at least three (3) years from the date of each record. Unless otherwise provided, throughout this subpart the phrase ''for each affected unit'' also applies to each group of affected or nonaffected units utilizing a common stack and common monitoring systems, pursuant to §§ 75.16 through 75.18, or utilizing a common pipe header and common fuel flowmeter, pursuant to section 2.1.2 of appendix D to this part. The file shall contain the following information:

(1) The data and information required in paragraphs (b) through (g) of this section, beginning with the earlier of the date of provisional certification, or the deadline in § 75.4(a), (b) or (c);

* * * * *

(g) *Missing data records.* The owner or operator shall record the causes of any missing data periods and the actions taken by the owner or operator to cure such causes.

38. Section 75.55 is amended by adding introductory text prior to paragraph (a), by correcting paragraphs (b)(1)(i), (b)(1)(xi), (b)(2)(vii), by revising paragraph (e), and by removing paragraph (f) to read as follows:

§ 75.55 General recordkeeping provisions for specific situations.

Before April 1, 2000, the owner or operator shall meet the requirements of either this section or § 75.58. On and after April 1, 2000, the owner or operator shall meet the requirements of § 75.58.

* * * * *

(b) * * *

(1) * * *

(i) The information required in § 75.54(c) for SO_2 concentration and volumetric flow if either one of these monitors is still operating:

* * * * *

(xi) Method of determination of SO_2 concentration and volumetric flow, using Codes 1–15 in Table 4 of § 75.54; and

* * * * *

(2) * * *

(vii) Method of determination of NO_X emission rate using Codes 1–15 in Table 4 of § 75.54; and

* * * * *

(e) *Specific SO_2 emission record provisions during the combustion of gaseous fuel.* (1) If SO_2 emissions are determined in accordance with the provisions in § 75.11(e)(2) during hours in which only gaseous fuel is combusted in a unit with an SO_2 CEMS, the owner or operator shall record the information in paragraph (c)(3) of this section in lieu of the information in §§ 75.54(c)(1) and (c)(3) or §§ 75.57(c)(1) and (c)(4), for those hours.

(2) The provisions of this paragraph apply to a unit which, in accordance with the provisions of § 75.11(e)(3), uses an SO_2 CEMS to determine SO_2 emissions during hours in which only gaseous fuel is combusted in the unit. If the unit sometimes burns only gaseous fuel that is very low sulfur fuel (as defined in § 72.2 of this chapter) as a primary and/or backup fuel and at other times combusts higher-sulfur fuels, such as coal or oil, as primary and/or backup fuel(s), then the owner or operator shall keep records on-site, suitable for inspection, of the type(s) of fuel(s) burned during each period of missing SO_2 data and the number of hours that each type of fuel was combusted in the unit during each missing data period. This recordkeeping requirement does not apply to an affected unit that burns very low sulfur fuel exclusively, nor does it apply to a unit that burns such gaseous fuel(s) only during unit startup.

39. Section 75.56 is amended by adding introductory text prior to paragraph (a) adding new paragraphs (a)(5)(vii) through (a)(5)(ix) and removing paragraph (d) to read as follows:

§ 75.56 Certification, quality assurance, and quality control record provisions.

Before April 1, 2000, the owner or operator shall meet the requirements of

either this section or § 75.59. On and after April 1, 2000, the owner or operator shall meet the requirements of § 75.59.

(a) * * *

(5) * * *

(vii) For flow monitors, the equation used to linearize the flow monitor and the numerical values of the polynomial coefficients or K factor(s) of that equation.

(viii) The raw data and calculated results for any stratification tests performed in accordance with sections 6.5.6.1 through 6.5.6.3 in appendix A to this part.

(ix) For moisture monitoring systems, the coefficient or ''K'' factor or other mathematical algorithm used to adjust the monitoring system with respect to the reference method.

* * * * *

40. Section 75.57 is added to subpart F to read as follows:

§ 75.57 General recordkeeping provisions.

Before April 1, 2000, the owner or operator shall meet the requirements of either this section or § 75.54. However, the provisions of this section which support a regulatory option provided in another section of this part must be followed if that regulatory option is used prior to April 1, 2000. On or after April 1, 2000, the owner or operator shall meet the requirements of this section.

(a) *Recordkeeping requirements for affected sources.* The owner or operator of any affected source subject to the requirements of this part shall maintain for each affected unit a file of all measurements, data, reports, and other information required by this part at the source in a form suitable for inspection for at least three (3) years from the date of each record. Unless otherwise provided, throughout this subpart the phrase ''for each affected unit'' also applies to each group of affected or nonaffected units utilizing a common stack and common monitoring systems, pursuant to §§ 75.16 through 75.18, or utilizing a common pipe header and common fuel flowmeter, pursuant to section 2.1.2 of appendix D to this part. The file shall contain the following information:

(1) The data and information required in paragraphs (b) through (h) of this section, beginning with the earlier of the date of provisional certification or the deadline in § 75.4(a), (b), or (c);

(2) The supporting data and information used to calculate values required in paragraphs (b) through (g) of this section, excluding the subhourly data points used to compute hourly averages under § 75.10(d), beginning with the earlier of the date of provisional certification or the deadline in § 75.4(a), (b), or (c);

(3) The data and information required in § 75.55 or § 75.58 for specific situations, as applicable, beginning with the earlier of the date of provisional certification or the deadline in § 75.4(a), (b), or (c);

(4) The certification test data and information required in § 75.56 or § 75.59 for tests required under § 75.20, beginning with the date of the first certification test performed, the quality assurance and quality control data and information required in § 75.56 or § 75.59 for tests, and the quality assurance/quality control plan required under § 75.21 and appendix B to this part, beginning with the date of provisional certification;

(5) The current monitoring plan as specified in § 75.53, beginning with the initial submission required by § 75.62; and

(6) The quality control plan as described in section 1 of appendix B to this part, beginning with the date of provisional certification.

(b) *Operating parameter record provisions.* The owner or operator shall record for each hour the following information on unit operating time, heat input rate, and load, separately for each affected unit and also for each group of units utilizing a common stack and a common monitoring system or utilizing a common pipe header and common fuel flowmeter:

(1) Date and hour;

(2) Unit operating time (rounded up to the nearest fraction of an hour (in equal increments that can range from one hundredth to one quarter of an hour, at the option of the owner or operator));

(3) Hourly gross unit load (rounded to nearest MWge) (or steam load in 1000 lb/hr at stated temperature and pressure, rounded to the nearest 1000 lb/hr, if elected in the monitoring plan);

(4) Operating load range corresponding to hourly gross load of 1 to 10, except for units using a common stack or common pipe header, which may use up to 20 load ranges for stack or fuel flow, as specified in the monitoring plan;

(5) Hourly heat input rate (mmBtu/hr, rounded to the nearest tenth);

(6) Identification code for formula used for heat input, as provided in § 75.53; and

(7) For CEMS units only, F-factor for heat input calculation and indication of whether the diluent cap was used for heat input calculations for the hour.

(c) *SO_2 emission record provisions.* The owner or operator shall record for each hour the information required by this paragraph for each affected unit or group of units using a common stack and common monitoring systems, except as provided under § 75.11(e) or for a gas-fired or oil-fired unit for which the owner or operator is using the optional protocol in appendix D to this part or for a low mass emissions unit for which the owner or operator is using the optional low mass emissions methodology in § 75.19(c) for estimating SO_2 mass emissions:

(1) For SO_2 concentration during unit operation, as measured and reported from each certified primary monitor, certified back-up monitor, or other approved method of emissions determination:

(i) Component-system identification code, as provided in § 75.53;

(ii) Date and hour;

(iii) Hourly average SO_2 concentration (ppm, rounded to the nearest tenth);

(iv) Hourly average SO_2 concentration (ppm, rounded to the nearest tenth), adjusted for bias if bias adjustment factor is required, as provided in § 75.24(d);

(v) Percent monitor data availability (recorded to the nearest tenth of a percent), calculated pursuant to § 75.32; and

(vi) Method of determination for hourly average SO_2 concentration using Codes 1–55 in Table 4a of this section.

(2) For flow rate during unit operation, as measured and reported from each certified primary monitor, certified back-up monitor, or other approved method of emissions determination:

(i) Component-system identification code, as provided in § 75.53;

(ii) Date and hour;

(iii) Hourly average volumetric flow rate (in scfh, rounded to the nearest thousand);

(iv) Hourly average volumetric flow rate (in scfh, rounded to the nearest thousand), adjusted for bias if bias adjustment factor required, as provided in § 75.24(d);

(v) Percent monitor data availability (recorded to the nearest tenth of a percent) for the flow monitor, calculated pursuant to § 75.32; and

(vi) Method of determination for hourly average flow rate using Codes 1–55 in Table 4a of this section.

(3) For flue gas moisture content during unit operation (where SO_2 concentration is measured on a dry basis), as measured and reported from each certified primary monitor, certified back-up monitor, or other approved method of emissions determination:

(i) Component-system identification code, as provided in § 75.53;

(ii) Date and hour;

(iii) Hourly average moisture content of flue gas (percent, rounded to the nearest tenth). If the continuous moisture monitoring system consists of wet- and dry-basis oxygen analyzers, also record both the wet- and dry-basis oxygen hourly averages (in percent O_2, rounded to the nearest tenth);

(iv) Percent monitor data availability (recorded to the nearest tenth of a percent) for the moisture monitoring system, calculated pursuant to § 75.32; and

(v) Method of determination for hourly average moisture percentage, using Codes 1–55 in Table 4a of this section.

(4) For SO_2 mass emission rate during unit operation, as measured and reported from the certified primary monitoring system(s), certified redundant or non-redundant back-up monitoring system(s), or other approved method(s) of emissions determination:

(i) Date and hour;

(ii) Hourly SO_2 mass emission rate (lb/hr, rounded to the nearest tenth);

(iii) Hourly SO_2 mass emission rate (lb/hr, rounded to the nearest tenth), adjusted for bias if bias adjustment factor required, as provided in § 75.24(d); and

(iv) Identification code for emissions formula used to derive hourly SO_2 mass emission rate from SO_2 concentration and flow and (if applicable) moisture data in paragraphs (c)(1), (c)(2), and (c)(3) of this section, as provided in § 75.53.

TABLE 4A.—CODES FOR METHOD OF EMISSIONS AND FLOW DETERMINATION

Code	Hourly emissions/flow measurement or estimation method
1	Certified primary emission/flow monitoring system.
2	Certified backup emission/flow monitoring system.
3	Approved alternative monitoring system.
4	Reference method: NSO_2: Method 6C. Flow: Method 2 or its allowable alternatives under appendix A to part 60 of this chapter. NO_X: Method 7E. CO_2 or O_2: Method 3A.
5	For units with add-on SO_2 and/or NO_X emission controls: SO_2 concentration or NO_X emission rate estimate from Agency preapproved parametric monitoring method.
6	Average of the hourly SO_2 concentrations, CO_2 concentrations, O_2 concentrations, NO_X concentrations, flow rates, moisture percentages or NO_X emission rates for the hour before and the hour following a missing data period.
7	Hourly average SO_2 concentration, CO_2 concentration, O_2 concentration, NO_X concentration, moisture percentage, flow rate, or NO_X emission rate using initial missing data procedures.
8	90th percentile hourly SO_2 concentration, CO_2 concentration, NO_X concentration, flow rate, moisture percentage, or NO_X emission rate or 10th percentile hourly O_2 concentration or moisture percentage (moisture missing data algorithm depends on which equations are used for emissions and heat input).
9	95th percentile hourly SO_2 concentration, CO_2 concentration, NO_X concentration, flow rate, moisture percentage, or NO_X emission rate or 5th percentile hourly O_2 concentration or moisture percentage (moisture missing data algorithm depends on which equations are used for emissions and heat input)
10	Maximum hourly SO_2 concentration, CO_2 concentration, NO_X concentration, flow rate, moisture percentage, or NO_X emission rate or minimum hourly O_2 concentration or moisture percentage in the applicable lookback period (moisture missing data algorithm depends on which equations are used for emissions and heat input).
11	Average of hourly flow rates, NO_X concentrations or NO_X emission rates in corresponding load range, for the applicable lookback period.
12	Maximum potential concentration of SO_2, maximum potential concentration of CO_2, maximum potential concentration of NO_X maximum potential flow rate, maximum potential NO_X emission rate, maximum potential moisture percentage, minimum potential O_2 concentration or minimum potential moisture percentage, as determined using section 2.1 of appendix A to this part (moisture missing data algorithm depends on which equations are used for emissions and heat input).
13	Fuel analysis data from appendix G to this part for CO_2 mass emissions. (This code is optional through 12/31/99, and shall not be used after 1/1/00.)
14	Diluent cap value (if the cap is replacing a CO_2 measurement, use 5.0 percent for boilers and 1.0 percent for turbines; if it is replacing an O_2 measurement, use 14.0 percent for boilers and 19.0 percent for turbines).
15	Fuel analysis data from appendix G to this part for CO_2 mass emissions. (This code is optional through 12/31/99, and shall not be used after 1/1/00.)
16	SO_2 concentration value of 2.0 ppm during hours when only ''very low sulfur fuel'', as defined in § 72.2 of this chapter, is combusted.
17	Like-kind replacement non-redundant backup monitoring analyzer.
19	200 percent of the MPC; default high range value.
20	200 percent of the full-scale range setting (full-scale exceedance of high range).
25	Maximum potential NO_X emission rate (MER). (Use only when a NO_X concentration full-scale exceedance occurs and the diluent monitor is unavailable.)
54	Other quality assured methodologies approved through petition. These hours are included in missing data lookback and are treated as unavailable hours for percent monitor availability calculations.
55	Other substitute data approved through petition. These hours are not included in missing data lookback and are treated as unavailable hours for percent monitor availability calculations.

(d) *NO_X emission record provisions.* The owner or operator shall record the applicable information required by this paragraph for each affected unit for each hour or partial hour during which the unit operates, except for a gas-fired peaking unit or oil-fired peaking unit for which the owner or operator is using the optional protocol in appendix E to this part or a low mass emissions unit for which the owner or operator is using the optional low mass emissions excepted methodology in § 75.19(c) for estimating NO_X emission rate. For each NO_X emission rate (in lb/mmBtu) measured by a NO_X-diluent monitoring system, or, if applicable, for each NO_X concentration (in ppm) measured by a

NO_X concentration monitoring system used to calculate NO_X mass emissions under § 75.71(a)(2), record the following data as measured and reported from the certified primary monitor, certified back-up monitor, or other approved method of emissions determination:

(1) Component-system identification code, as provided in § 75.53 (including identification code for the moisture monitoring system, if applicable);

(2) Date and hour;

(3) Hourly average NO_X concentration (ppm, rounded to the nearest tenth) and hourly average NO_X concentration (ppm, rounded to the nearest tenth) adjusted for bias if bias adjustment factor required, as provided in § 75.24(d);

(4) Hourly average diluent gas concentration (for NO_X-diluent monitoring systems, only, in units of percent O_2 or percent CO_2, rounded to the nearest tenth);

(5) If applicable, the hourly average moisture content of the stack gas (percent H_2O, rounded to the nearest tenth). If the continuous moisture monitoring system consists of wet- and dry-basis oxygen analyzers, also record both the hourly wet- and dry-basis oxygen readings (in percent O_2, rounded to the nearest tenth);

(6) Hourly average NO_X emission rate (for NO_X-diluent monitoring systems only, in units of lb/mmBtu, rounded either to the nearest hundredth or thousandth prior to April 1, 2000 and rounded to the nearest thousandth on and after April 1, 2000);

(7) Hourly average NO_X emission rate (for NO_X-diluent monitoring systems only, in units of lb/mmBtu, rounded either to the nearest hundredth or thousandth prior to April 1, 2000 and rounded to the nearest thousandth on and after April 1, 2000), adjusted for bias if bias adjustment factor is required, as provided in § 75.24(d). The requirement to report hourly NO_X emission rates to the nearest thousandth shall not affect NO_X compliance determinations under part 76 of this chapter; compliance with each applicable emission limit under part 76 shall be determined to the nearest hundredth pound per million Btu;

(8) Percent monitoring system data availability (recorded to the nearest tenth of a percent), for the NO_X-diluent or NO_X concentration monitoring system, and, if applicable, for the moisture monitoring system, calculated pursuant to § 75.32;

(9) Method of determination for hourly average NO_X emission rate or NO_X concentration and (if applicable) for the hourly average moisture percentage, using Codes 1–55 in Table 4a of this section; and

(10) Identification codes for emissions formulas used to derive hourly average NO_X emission rate and total NO_X mass emissions, as provided in § 75.53, and (if applicable) the F-factor used to convert NO_X concentrations into emission rates.

(e) *CO_2 emission record provisions.* Except for a low mass emissions unit for which the owner or operator is using the optional low mass emissions excepted methodology in § 75.19(c) for estimating CO_2 mass emissions, the owner or operator shall record or calculate CO_2 emissions for each affected unit using one of the following methods specified in this section:

(1) If the owner or operator chooses to use a CO_2 CEMS (including an O_2 monitor and flow monitor, as specified in appendix F to this part), then the owner or operator shall record for each hour or partial hour during which the unit operates the following information for CO_2 mass emissions, as measured and reported from the certified primary monitor, certified back-up monitor, or other approved method of emissions determination:

(i) Component-system identification code, as provided in § 75.53 (including identification code for the moisture monitoring system, if applicable);

(ii) Date and hour;

(iii) Hourly average CO_2 concentration (in percent, rounded to the nearest tenth);

(iv) Hourly average volumetric flow rate (scfh, rounded to the nearest thousand scfh);

(v) Hourly average moisture content of flue gas (percent, rounded to the nearest tenth), where CO_2 concentration is measured on a dry basis. If the continuous moisture monitoring system consists of wet- and dry-basis oxygen analyzers, also record both the hourly wet- and dry-basis oxygen readings (in percent O_2, rounded to the nearest tenth);

(vi) Hourly average CO_2 mass emission rate (tons/hr, rounded to the nearest tenth);

(vii) Percent monitor data availability for both the CO_2 monitoring system and, if applicable, the moisture monitoring system (recorded to the nearest tenth of a percent), calculated pursuant to § 75.32;

(viii) Method of determination for hourly average CO_2 mass emission rate and hourly average CO_2 concentration, and, if applicable, for the hourly average moisture percentage, using Codes 1–55 in Table 4a of this section;

(ix) Identification code for emissions formula used to derive hourly average CO_2 mass emission rate, as provided in § 75.53; and

(x) Indication of whether the diluent cap was used for CO_2 calculation for the hour.

(2) As an alternative to paragraph (e)(1) of this section, the owner or operator may use the procedures in § 75.13 and in appendix G to this part, and shall record daily the following information for CO_2 mass emissions:

(i) Date;

(ii) Daily combustion-formed CO_2 mass emissions (tons/day, rounded to the nearest tenth);

(iii) For coal-fired units, flag indicating whether optional procedure to adjust combustion-formed CO_2 mass emissions for carbon retained in flyash has been used and, if so, the adjustment;

(iv) For a unit with a wet flue gas desulfurization system or other controls generating CO_2, daily sorbent-related CO_2 mass emissions (tons/day, rounded to the nearest tenth); and

(v) For a unit with a wet flue gas desulfurization system or other controls generating CO_2, total daily CO_2 mass emissions (tons/day, rounded to the nearest tenth) as the sum of combustion-formed emissions and sorbent-related emissions.

(f) *Opacity records.* The owner or operator shall record opacity data as specified by the State or local air pollution control agency. If the State or local air pollution control agency does not specify recordkeeping requirements for opacity, then record the information required by paragraphs (f) (1) through (5) of this section for each affected unit, except as provided in §§ 75.14(b), (c), and (d). The owner or operator shall also keep records of all incidents of opacity monitor downtime during unit operation, including reason(s) for the monitor outage(s) and any corrective action(s) taken for opacity, as measured and reported by the continuous opacity monitoring system:

(1) Component/system identification code;

(2) Date, hour, and minute;

(3) Average opacity of emissions for each six minute averaging period (in percent opacity);

(4) If the average opacity of emissions exceeds the applicable standard, then a code indicating such an exceedance has occurred; and (5) Percent monitor data availability (recorded to the nearest tenth of a percent), calculated according to the requirements of the procedure recommended for State Implementation Plans in appendix M to part 51 of this chapter.

(g) *Diluent record provisions.* The owner or operator of a unit using a flow monitor and an O_2 diluent monitor to

determine heat input, in accordance with Equation F–17 or F–18 of appendix F to this part, or a unit that accounts for heat input using a flow monitor and a CO_2 diluent monitor (which is used only for heat input determination and is not used as a CO_2 pollutant concentration monitor) shall keep the following records for the O_2 or CO_2 diluent monitor:

(1) Component-system identification code, as provided in § 75.53;

(2) Date and hour;

(3) Hourly average diluent gas (O_2 or CO_2) concentration (in percent, rounded to the nearest tenth);

(4) Percent monitor data availability for the diluent monitor (recorded to the nearest tenth of a percent), calculated pursuant to § 75.32; and

(5) Method of determination code for diluent gas (O_2 or CO_2) concentration data using Codes 1–55, in Table 4a of this section.

(h) *Missing data records.* The owner or operator shall record the causes of any missing data periods and the actions taken by the owner or operator to correct such causes.

41. Section 75.58 is added to subpart F to read as follows:

§ 75.58 General recordkeeping provisions for specific situations.

Before April 1, 2000, the owner or operator shall meet the requirements of either this section or § 75.55. However, the provisions of this section which support a regulatory option provided in another section of this part must be followed if that regulatory option is exercised prior to April 1, 2000. On or after April 1, 2000, the owner or operator shall meet the requirements of this section.

(a) [Reserved]

(b) *Specific parametric data record provisions for calculating substitute emissions data for units with add-on emission controls.* In accordance with § 75.34, the owner or operator of an affected unit with add-on emission controls shall either record the applicable information in paragraph (b)(3) of this section for each hour of missing SO_2 concentration data or NO_X emission rate (in addition to other information), or shall record the information in paragraph (b)(1) of this section for SO_2 or paragraph (b)(2) of this section for NO_X through an automated data acquisition and handling system, as appropriate to the type of add-on emission controls:

(1) For units with add-on SO_2 emission controls using the optional parametric monitoring procedures in appendix C to this part, for each hour of missing SO_2 concentration or volumetric flow data:

(i) The information required in § 75.54(c) or § 75.57(c) for SO_2 concentration and volumetric flow, if either one of these monitors is still operating;

(ii) Date and hour;

(iii) Number of operating scrubber modules;

(iv) Total feedrate of slurry to each operating scrubber module (gal/min);

(v) Pressure differential across each operating scrubber module (inches of water column);

(vi) For a unit with a wet flue gas desulfurization system, an in-line measure of absorber pH for each operating scrubber module;

(vii) For a unit with a dry flue gas desulfurization system, the inlet and outlet temperatures across each operating scrubber module;

(viii) For a unit with a wet flue gas desulfurization system, the percent solids in slurry for each scrubber module;

(ix) For a unit with a dry flue gas desulfurization system, the slurry feed rate (gal/min) to the atomizer nozzle;

(x) For a unit with SO_2 add-on emission controls other than wet or dry limestone, corresponding parameters approved by the Administrator;

(xi) Method of determination of SO_2 concentration and volumetric flow using Codes 1–15 in Table 4 of § 75.54 or Codes 1–55 in Table 4a of § 75.57; and

(xii) Inlet and outlet SO_2 concentration values, recorded by an SO_2 continuous emission monitoring system, and the removal efficiency of the add-on emission controls.

(2) For units with add-on NO_X emission controls using the optional parametric monitoring procedures in appendix C to this part, for each hour of missing NO_X emission rate data:

(i) Date and hour;

(ii) Inlet air flow rate (scfh, rounded to the nearest thousand);

(iii) Excess O_2 concentration of flue gas at stack outlet (percent, rounded to the nearest tenth of a percent);

(iv) Carbon monoxide concentration of flue gas at stack outlet (ppm, rounded to the nearest tenth);

(v) Temperature of flue gas at furnace exit or economizer outlet duct (°F);

(vi) Other parameters specific to NO_X emission controls (e.g., average hourly reagent feedrate);

(vii) Method of determination of NO_X emission rate using Codes 1–15 in Table 4 of § 75.54 or Codes 1–55 in Table 4a of § 75.57; and

(viii) Inlet and outlet NO_X emission rate values recorded by a NO_X continuous emission monitoring system and the removal efficiency of the add-on emission controls.

(3) For units with add-on SO_2 or NO_X emission controls following the provisions of § 75.34(a)(1) or (a)(2), the owner or operator shall, for each hour of missing SO_2 or NO_X emission data, record:

(i) Parametric data which demonstrate the proper operation of the add-on emission controls, as described in the quality assurance/quality control program for the unit. The parametric data shall be maintained on site and shall be submitted, upon request, to the Administrator, EPA Regional office, State, or local agency;

(ii) A flag indicating either that the add-on emission controls are operating properly, as evidenced by all parameters being within the ranges specified in the quality assurance/quality control program, or that the add-on emission controls are not operating properly;

(iii) For units substituting a representative SO_2 concentration during missing data periods under § 75.34(a)(2), any available inlet and outlet SO_2 concentration values recorded by an SO_2 continuous emission monitoring system; and

(iv) For units substituting a representative NO_X emission rate during missing data periods under § 75.34(a)(2), any available inlet and outlet NO_X emission rate values recorded by a continuous emission monitoring system.

(c) *Specific SO_2 emission record provisions for gas-fired or oil-fired units using optional protocol in appendix D to this part.* In lieu of recording the information in § 75.54(c) or § 75.57(c), the owner or operator shall record the applicable information in this paragraph for each affected gas-fired or oil-fired unit for which the owner or operator is using the optional protocol in appendix D to this part for estimating SO_2 mass emissions:

(1) For each hour when the unit is combusting oil:

(i) Date and hour;

(ii) Hourly average volumetric flow rate of oil, while the unit combusts oil, with the units in which oil flow is recorded (gal/hr, scf/hr, m^3/hr, or bbl/hr, rounded to the nearest tenth) (flag value if derived from missing data procedures);

(iii) Sulfur content of oil sample used to determine SO_2 mass emission rate (rounded to nearest hundredth for diesel fuel or to the nearest tenth of a percent for other fuel oil) (flag value if derived from missing data procedures);

(iv) [Reserved];

(v) Mass flow rate of oil combusted each hour and method of determination (lb/hr, rounded to the nearest tenth)

(flag value if derived from missing data procedures);

(vi) SO_2 mass emission rate from oil (lb/hr, rounded to the nearest tenth);

(vii) For units using volumetric oil flowmeters, density of oil with the units in which oil density is recorded and method of determination (flag value if derived from missing data procedures);

(viii) Gross calorific value of oil used to determine heat input and method of determination (Btu/lb) (flag value if derived from missing data procedures);

(ix) Hourly heat input rate from oil, according to procedures in appendix D to this part (mmBtu/hr, to the nearest tenth);

(x) Fuel usage time for combustion of oil during the hour (rounded up to the nearest fraction of an hour (in equal increments that can range from one hundredth to one quarter of an hour, at the option of the owner or operator)) (flag to indicate multiple/single fuel types combusted);

(xi) Monitoring system identification code;

(xii) Operating load range corresponding to gross unit load (01–20); and

(xiii) Type of oil combusted.

(2) For gas-fired units or oil-fired units using the optional protocol in appendix D to this part for daily manual oil sampling, when the unit is combusting oil, the highest sulfur content recorded from the most recent 30 daily oil samples (rounded to the nearest tenth of a percent).

(3) For gas-fired units or oil-fired units using the optional protocol in appendix D to this part, when either an assumed oil sulfur content or density value is used, or when as-delivered oil sampling is performed:

(i) Record the measured sulfur content, gross calorific value, and, if applicable, density from each fuel sample; and

(ii) Record and report the assumed sulfur content, gross calorific value, and, if applicable, density used to calculate SO_2 mass emission rate or heat input rate.

(4) For each hour when the unit is combusting gaseous fuel:

(i) Date and hour.

(ii) Hourly heat input rate from gaseous fuel, according to procedures in appendix F to this part (mmBtu/hr, rounded to the nearest tenth).

(iii) Sulfur content or SO_2 emission rate, in one of the following formats, in accordance with the appropriate procedure from appendix D to this part:

(A) Sulfur content of gas sample and method of determination (rounded to the nearest 0.1 grains/100 scf) (flag value if derived from missing data procedures); or

(B) Default SO_2 emission rate of 0.0006 lb/mmBtu for pipeline natural gas, or calculated SO_2 emission rate for natural gas from section 2.3.2.1.1 of appendix D to this part.

(iv) Hourly flow rate of gaseous fuel, while the unit combusts gas (100 scfh) and source of data code for gas flow rate.

(v) Gross calorific value of gaseous fuel used to determine heat input rate (Btu/100 scf) (flag value if derived from missing data procedures).

(vi) SO_2 mass emission rate due to the combustion of gaseous fuels (lb/hr).

(vii) Fuel usage time for combustion of gaseous fuel during the hour (rounded up to the nearest fraction of an hour (in equal increments that can range from one hundredth to one quarter of an hour, at the option of the owner or operator)) (flag to indicate multiple/single fuel types combusted).

(viii) Monitoring system identification code.

(ix) Operating load range corresponding to gross unit load (01–20).

(x) Type of gas combusted.

(5) For each oil sample or sample of diesel fuel:

(i) Date of sampling;

(ii) Sulfur content (percent, rounded to the nearest hundredth for diesel fuel and to the nearest tenth for other fuel oil);

(iii) Gross calorific value (Btu/lb); and

(iv) Density or specific gravity, if required to convert volume to mass.

(6) For each sample of gaseous fuel for sulfur content:

(i) Date of sampling; and

(ii) Sulfur content (grains/100 scf, rounded to the nearest tenth).

(7) For each sample of gaseous fuel for gross calorific value:

(i) Date of sampling; and

(ii) Gross calorific value (Btu/100 scf)

(8) For each oil sample or sample of gaseous fuel:

(i) Type of oil or gas; and

(ii) Type of sulfur sampling (using codes in tables D–4 and D–5 of appendix D to this part) and value used in calculations, and type of GCV or density sampling (using codes in tables D–4 and D–5 of appendix D to this part).

(d) *Specific NO_X emission record provisions for gas-fired peaking units or oil-fired peaking units using optional protocol in appendix E to this part.* In lieu of recording the information in paragraph § 75.54(d) or § 75.57(d), the owner or operator shall record the applicable information in this paragraph for each affected gas-fired peaking unit or oil-fired peaking unit for which the owner or operator is using the optional protocol in appendix E to this part for estimating NO_X emission rate. The owner or operator shall meet the requirements of this section, except that the requirements under paragraphs (d)(1)(vii) and (d)(2)(vii) of this section shall become applicable on the date on which the owner or operator is required to monitor, record, and report NO_X mass emissions under an applicable State or federal NO_X mass emission reduction program, if the provisions of subpart H of this part are adopted as requirements under such a program.

(1) For each hour when the unit is combusting oil:

(i) Date and hour;

(ii) Hourly average mass flow rate of oil while the unit combusts oil with the units in which oil flow is recorded (lb/hr);

(iii) Gross calorific value of oil used to determine heat input (Btu/lb);

(iv) Hourly average NO_X emission rate from combustion of oil (lb/mmBtu, rounded to the nearest hundredth);

(v) Heat input rate of oil (mmBtu/hr, rounded to the nearest tenth);

(vi) Fuel usage time for combustion of oil during the hour (rounded up to the nearest fraction of an hour, in equal increments that can range from one hundredth to one quarter of an hour, at the option of the owner or operator);

(vii) NO_X mass emissions, calculated in accordance with section 8.1 of appendix F to this part;

(viii) NO_X monitoring system identification code;

(ix) Fuel flow monitoring system identification code; and

(x) Segment identification of the correlation curve.

(2) For each hour when the unit is combusting gaseous fuel:

(i) Date and hour;

(ii) Hourly average fuel flow rate of gaseous fuel, while the unit combusts gas (100 scfh);

(iii) Gross calorific value of gaseous fuel used to determine heat input (Btu/100 scf) (flag value if derived from missing data procedures);

(iv) Hourly average NO_X emission rate from combustion of gaseous fuel (lb/mmBtu, rounded to nearest hundredth);

(v) Heat input rate from gaseous fuel, while the unit combusts gas (mmBtu/hr, rounded to the nearest tenth);

(vi) Fuel usage time for combustion of gaseous fuel during the hour (rounded up to the nearest fraction of an hour, in equal increments that can range from one hundredth to one quarter of an hour, at the option of the owner or operator);

(vii) NO_X mass emissions, calculated in accordance with section 8.1 of appendix F to this part;

(viii) NO_X monitoring system identification code;

(ix) Fuel flow monitoring system identification code; and

(x) Segment identification of the correlation curve.

(3) For each hour when the unit combusts multiple fuels:

(i) Date and hour;

(ii) Hourly average heat input rate from all fuels (mmBtu/hr, rounded to the nearest tenth); and

(iii) Hourly average NO_X emission rate for the unit for all fuels (lb/mmBtu, rounded to the nearest hundredth).

(4) For each hour when the unit combusts any fuel(s):

(i) For stationary gas turbines and diesel or dual-fuel reciprocating engines, hourly averages of operating parameters under section 2.3 of appendix E to this part (flag if value is outside of manufacturer's recommended range); and

(ii) For boilers, hourly average boiler O_2 reading (percent, rounded to the nearest tenth) (flag if value exceeds by more than 2 percentage points the O_2 level recorded at the same heat input during the previous NO_X emission rate test).

(5) For each fuel sample:

(i) Date of sampling;

(ii) Gross calorific value (Btu/lb for oil, Btu/100 scf for gaseous fuel); and

(iii) Density or specific gravity, if required to convert volume to mass.

(6) Flag to indicate multiple or single fuels combusted.

(e) *Specific SO_2 emission record provisions during the combustion of gaseous fuel.* (1) If SO_2 emissions are determined in accordance with the provisions in § 75.11(e)(2) during hours in which only gaseous fuel is combusted in a unit with an SO_2 CEMS, the owner or operator shall record the information in paragraph (c)(3) of this section in lieu of the information in §§ 75.54(c)(1) and (c)(3) or §§ 75.57(c)(1), (c)(3), and (c)(4), for those hours.

(2) The provisions of this paragraph apply to a unit which, in accordance with the provisions of § 75.11(e)(3), uses an SO_2 CEMS to determine SO_2 emissions during hours in which only gaseous fuel is combusted in the unit. If the unit sometimes burns only gaseous fuel that is very low sulfur fuel (as defined in § 72.2 of this chapter) as a primary and/or backup fuel and at other times combusts higher sulfur fuels, such as coal or oil, as primary and/or backup fuel(s), then the owner or operator shall keep records on-site, in a form suitable for inspection, of the type(s) of fuel(s) burned during each period of missing SO_2 data and the number of hours that each type of fuel was combusted in the unit during each missing data period. This recordkeeping requirement does not apply to an affected unit that burns very low sulfur fuel exclusively, nor does it apply to a unit that burns such gaseous fuel(s) only during unit startup.

(f) *Specific SO_2, NO_X, and CO_2 record provisions for gas-fired or oil-fired units using the optional low mass emissions excepted methodology in § 75.19.* In lieu of recording the information in §§ 75.54(b) through (e) or §§ 75.57(b) through (e), the owner or operator shall record the following information for each affected low mass emissions unit for which the owner or operator is using the optional low mass emissions excepted methodology in § 75.19(c):

(1) All low mass emission units shall report for each hour:

(i) Date and hour;

(ii) Unit operating time (units using the long term fuel flow methodology report operating time to be 1);

(iii) Fuel type (pipeline natural gas, natural gas, residual oil, or diesel fuel) (note: if more than one type of fuel is combusted in the hour, indicate the fuel type which results in the highest emission factors for NO_X);

(iv) Average hourly NO_X emission rate (lb/mmBtu, rounded to the nearest thousandth);

(v) Hourly NO_X mass emissions (lbs, rounded to the nearest tenth);

(vi) Hourly SO_2 mass emissions (lbs, rounded to the nearest tenth);

(vii) Hourly CO_2 mass emissions (tons, rounded to the nearest tenth);

(viii) Hourly calculated unit heat input in mmBtu;

(ix) Hourly unit output in gross load or steam load;

(x) The method of determining hourly heat input: unit maximum rated heat input, unit long term fuel flow or group long term fuel flow;

(xi) The method of determining NO_X emission rate used for the hour: default based on fuel combusted, unit specific default based on testing or historical data, group default based on representative testing of identical units, unit specific based on testing of a unit with NO_X controls operating, or missing data value; and

(xii) Control status of the unit.

(2) Low mass emission units using the optional long term fuel flow methodology to determine unit heat input shall report for each quarter:

(i) Type of fuel;

(ii) Beginning date and hour of long term fuel flow measurement period;

(iii) End date and hour of long term fuel flow period;

(iv) Quantity of fuel measured;

(v) Units of measure;

(vi) Fuel GCV value used to calculate heat input;

(vii) Units of GCV;

(viii) Method of determining fuel GCV used;

(ix) Method of determining fuel flow over period;

(x) Component-system identification code;

(xi) Quarter and year;

(xii) Total heat input (mmBtu); and

(xiii) Operating hours in period.

42. Section 75.59 is added to subpart F to read as follows:

§ 75.59 Certification, quality assurance, and quality control record provisions.

Before April 1, 2000, the owner or operator shall meet the requirements of this section or § 75.56. However, the provisions of this section which support a regulatory option provided in another section of this part must be followed if that regulatory option is exercised prior to April 1, 2000. On or after April 1, 2000, the owner or operator shall meet the requirements of this section.

(a) *Continuous emission or opacity monitoring systems.* The owner or operator shall record the applicable information in this section for each certified monitor or certified monitoring system (including certified backup monitors) measuring and recording emissions or flow from an affected unit.

(1) For each SO_2 or NO_X pollutant concentration monitor, flow monitor, CO_2 pollutant concentration monitor (including O_2 monitors used to determine CO_2 emissions), or diluent gas monitor (including wet- and dry-basis O_2 monitors used to determine percent moisture), the owner or operator shall record the following for all daily and 7-day calibration error tests and all off-line calibration demonstrations, including any follow-up tests after corrective action:

(i) Component-system identification code;

(ii) Instrument span and span scale;

(iii) Date and hour;

(iv) Reference value (i.e., calibration gas concentration or reference signal value, in ppm or other appropriate units);

(v) Observed value (monitor response during calibration, in ppm or other appropriate units);

(vi) Percent calibration error (rounded to the nearest tenth of a percent) (flag if using alternative performance specification for low emitters or differential pressure flow monitors);

(vii) Calibration gas level;

(viii) Test number and reason for test;

(ix) For 7-day calibration tests for certification or recertification, a certification from the cylinder gas vendor or CEMS vendor that calibration gas, as defined in § 72.2 of this chapter and appendix A to this part, was used to conduct calibration error testing;

(x) Description of any adjustments, corrective actions, or maintenance prior to a passed test or following a failed test; and

(xi) For the qualifying test for off-line calibration, the owner or operator shall indicate whether the unit is off-line or on-line.

(2) For each flow monitor, the owner or operator shall record the following for all daily interference checks, including any follow-up tests after corrective action.

(i) Component-system identification code;

(ii) Date and hour;

(iii) Code indicating whether monitor passes or fails the interference check; and

(iv) Description of any adjustments, corrective actions, or maintenance prior to a passed test or following a failed test.

(3) For each SO_2 or NO_X pollutant concentration monitor, CO_2 pollutant concentration monitor (including O_2 monitors used to determine CO_2 emissions), or diluent gas monitor (including wet- and dry-basis O_2 monitors used to determine percent moisture), the owner or operator shall record the following for the initial and all subsequent linearity check(s), including any follow-up tests after corrective action.

(i) Component-system identification code;

(ii) Instrument span and span scale;

(iii) Calibration gas level;

(iv) Date and time (hour and minute) of each gas injection at each calibration gas level;

(v) Reference value (i.e., reference gas concentration for each gas injection at each calibration gas level, in ppm or other appropriate units);

(vi) Observed value (monitor response to each reference gas injection at each calibration gas level, in ppm or other appropriate units);

(vii) Mean of reference values and mean of measured values at each calibration gas level;

(viii) Linearity error at each of the reference gas concentrations (rounded to nearest tenth of a percent) (flag if using alternative performance specification);

(ix) Test number and reason for test (flag if aborted test); and

(x) Description of any adjustments, corrective action, or maintenance prior to a passed test or following a failed test.

(4) For each differential pressure type flow monitor, the owner or operator shall record items in paragraphs (a)(4) (i) through (v) of this section, for all quarterly leak checks, including any follow-up tests after corrective action. For each flow monitor, the owner or operator shall record items in paragraphs (a)(4) (vi) and (vii) for all flow-to-load ratio and gross heat rate tests:

(i) Component-system identification code.

(ii) Date and hour.

(iii) Reason for test.

(iv) Code indicating whether monitor passes or fails the quarterly leak check.

(v) Description of any adjustments, corrective actions, or maintenance prior to a passed test or following a failed test.

(vi) Test data from the flow-to-load ratio or gross heat rate (GHR) evaluation, including:

(A) Monitoring system identification code;

(B) Calendar year and quarter;

(C) Indication of whether the test is a flow-to-load ratio or gross heat rate evaluation;

(D) Indication of whether bias adjusted flow rates were used;

(E) Average absolute percent difference between reference ratio (or GHR) and hourly ratios (or GHR values);

(F) Test result;

(G) Number of hours used in final quarterly average;

(H) Number of hours exempted for use of a different fuel type;

(I) Number of hours exempted for load ramping up or down;

(J) Number of hours exempted for scrubber bypass;

(K) Number of hours exempted for hours preceding a normal-load flow RATA;

(L) Number of hours exempted for hours preceding a successful diagnostic test, following a documented monitor repair or major component replacement; and

(M) Number of hours excluded for flue gases discharging simultaneously thorough a main stack and a bypass stack.

(vii) Reference data for the flow-to-load ratio or gross heat rate evaluation, including (as applicable):

(A) Reference flow RATA end date and time;

(B) Test number of the reference RATA;

(C) Reference RATA load and load level;

(D) Average reference method flow rate during reference flow RATA;

(E) Reference flow/load ratio;

(F) Average reference method diluent gas concentration during flow RATA and diluent gas units of measure;

(G) Fuel specific F_d -or F_c-factor during flow RATA and F-factor units of measure;

(H) Reference gross heat rate value;

(I) Monitoring system identification code;

(J) Average hourly heat input rate during RATA;

(K) Average gross unit load; and

(L) Operating load level.

(5) For each SO_2 pollutant concentration monitor, flow monitor, each CO_2 pollutant concentration monitor (including any O_2 concentration monitor used to determine CO_2 mass emissions or heat input), each NO_X-diluent continuous emission monitoring system, each SO_2-diluent continuous emission monitoring system, each NO_X concentration monitoring system, each diluent gas (O_2 or CO_2) monitor used to determine heat input, each moisture monitoring system, and each approved alternative monitoring system, the owner or operator shall record the following information for the initial and all subsequent relative accuracy test audits:

(i) Reference method(s) used.

(ii) Individual test run data from the relative accuracy test audit for the SO_2 concentration monitor, flow monitor, CO_2 pollutant concentration monitor, NO_X-diluent continuous emission monitoring system, SO_2-diluent continuous emission monitoring system, diluent gas (O_2 or CO_2) monitor used to determine heat input, NO_X concentration monitoring system, moisture monitoring system, or approved alternative monitoring system, including:

(A) Date, hour, and minute of beginning of test run;

(B) Date, hour, and minute of end of test run;

(C) Monitoring system identification code;

(D) Test number and reason for test;

(E) Operating load level (low, mid, high, or normal, as appropriate) and number of load levels comprising test;

(F) Normal load indicator for flow RATAs (except for peaking units);

(G) Units of measure;

(H) Run number;

(I) Run value from CEMS being tested, in the appropriate units of measure;

(J) Run value from reference method, in the appropriate units of measure;

(K) Flag value (0, 1, or 9, as appropriate) indicating whether run has been used in calculating relative accuracy and bias values or whether the test was aborted prior to completion;

(L) Average gross unit load, expressed as a total gross unit load, rounded to the nearest MWe, or as steam load, rounded to the nearest thousand lb/hr); and

(M) Flag to indicate whether an alternative performance specification has been used.

(iii) Calculations and tabulated results, as follows:

(A) Arithmetic mean of the monitoring system measurement values, of the reference method values, and of

their differences, as specified in Equation A–7 in appendix A to this part;

(B) Standard deviation, as specified in Equation A–8 in appendix A to this part;

(C) Confidence coefficient, as specified in Equation A–9 in appendix A to this part;

(D) Statistical ''t'' value used in calculations;

(E) Relative accuracy test results, as specified in Equation A–10 in appendix A to this part. For multi-level flow monitor tests the relative accuracy test results shall be recorded at each load level tested. Each load level shall be expressed as a total gross unit load, rounded to the nearest MWe, or as steam load, rounded to the nearest thousand lb/hr;

(F) Bias test results as specified in section 7.6.4 in appendix A to this part; and

(G) Bias adjustment factor from Equation A–12 in appendix A to this part for any monitoring system that failed the bias test (except as otherwise provided in section 7.6.5 of appendix A to this part) and 1.000 for any monitoring system that passed the bias test.

(iv) Description of any adjustment, corrective action, or maintenance prior to a passed test or following a failed or aborted test.

(v) F-factor value(s) used to convert NO_X pollutant concentration and diluent gas (O_2 or CO_2) concentration measurements into NO_X emission rates (in lb/mmBtu), heat input or CO_2 emissions.

(vi) For flow monitors, the equation used to linearize the flow monitor and the numerical values of the polynomial coefficients or K factor(s) of that equation.

(vii) For moisture monitoring systems, the coefficient or ''K'' factor or other mathematical algorithm used to adjust the monitoring system with respect to the reference method.

(6) For each SO_2, NO_X, or CO_2 pollutant concentration monitor, NO_X-diluent continuous emission monitoring system, SO_2-diluent continuous emission monitoring system, NO_X concentration monitoring system, or diluent gas (O_2 or CO_2) monitor used to determine heat input, the owner or operator shall record the following information for the cycle time test:

(i) Component-system identification code;

(ii) Date;

(iii) Start and end times;

(iv) Upscale and downscale cycle times for each component;

(v) Stable start monitor value;

(vi) Stable end monitor value;

(vii) Reference value of calibration gas(es);

(viii) Calibration gas level;

(ix) Cycle time result for the entire system;

(x) Reason for test; and

(xi) Test number.

(7) In addition to the information in paragraph (a)(5) of this section, the owner or operator shall record, for each relative accuracy test audit, supporting information sufficient to substantiate compliance with all applicable sections and appendices in this part. Unless otherwise specified in this part or in an applicable test method, the information in paragraphs (a)(7)(i) through (a)(7)(vi) may be recorded either in hard copy format, electronic format or a combination of the two, and the owner or operator shall maintain this information in a format suitable for inspection and audit purposes. This RATA supporting information shall include, but shall not be limited to, the following data elements:

(i) For each RATA using Reference Method 2 (or its allowable alternatives) in appendix A to part 60 of this chapter to determine volumetric flow rate:

(A) Information indicating whether or not the location meets requirements of Method 1 in appendix A to part 60 of this chapter; and

(B) Information indicating whether or not the equipment passed the required leak checks.

(ii) For each run of each RATA using Reference Method 2 (or its allowable alternatives in appendix A to part 60 of this chapter) to determine volumetric flow rate, record the following data elements (as applicable to the measurement method used):

(A) Operating load level (low, mid, high, or normal, as appropriate);

(B) Number of reference method traverse points;

(C) Average stack gas temperature (°F);

(D) Barometric pressure at test port (inches of mercury);

(E) Stack static pressure (inches of H_2O);

(F) Absolute stack gas pressure (inches of mercury);

(G) Percent CO_2 and O_2 in the stack gas, dry basis;

(H) CO_2 and O_2 reference method used;

(I) Moisture content of stack gas (percent H_2O);

(J) Molecular weight of stack gas, dry basis (lb/lb-mole);

(K) Molecular weight of stack gas, wet basis (lb/lb-mole);

(L) Stack diameter (or equivalent diameter) at the test port (ft);

(M) Average square root of velocity head of stack gas (inches of H_2O) for the run;

(N) Stack or duct cross-sectional area at test port (ft^2);

(O) Average velocity (ft/sec);

(P) Total volumetric flow rate (scfh, wet basis);

(Q) Flow rate reference method used;

(R) Average velocity, adjusted for wall effects;

(S) Calculated (site-specific) wall effects adjustment factor determined during the run, and, if different, the wall effects adjustment factor used in the calculations; and

(T) Default wall effects adjustment factor used.

(iii) For each traverse point of each run of each RATA using Reference Method 2 (or its allowable alternatives in appendix A to part 60 of this chapter) to determine volumetric flow rate, record the following data elements (as applicable to the measurement method used):

(A) Reference method probe type;

(B) Pressure measurement device type;

(C) Traverse point ID;

(D) Probe or pitot tube calibration coefficient;

(E) Date of latest probe or pitot tube calibration;

(F) Velocity differential pressure at traverse point (inches of H_2O);

(G) T_S, stack temperature at the traverse point (°F);

(H) Composite (wall effects) traverse point identifier;

(I) Number of points included in composite traverse point;

(J) Yaw angle of flow at traverse point (degrees);

(K) Pitch angle of flow at traverse point (degrees);

(L) Calculated velocity at traverse point both accounting and not accounting for wall effects (ft/sec); and

(M) Probe identification number.

(iv) For each RATA using Method 6C, 7E, or 3A in appendix A to part 60 of this chapter to determine SO_2, NO_X, CO_2, or O_2 concentration:

(A) Pollutant or diluent gas being measured;

(B) Span of reference method analyzer;

(C) Type of reference method system (e.g., extractive or dilution type);

(D) Reference method dilution factor (dilution type systems, only);

(E) Reference gas concentrations (zero, mid, and high gas levels) used for the 3-point pre-test analyzer calibration error test (or, for dilution type reference method systems, for the 3-point pre-test system calibration error test) and for any subsequent recalibrations;

(F) Analyzer responses to the zero-, mid-, and high-level calibration gases during the 3-point pre-test analyzer (or system) calibration error test and during any subsequent recalibration(s);

(G) Analyzer calibration error at each gas level (zero, mid, and high) for the 3-point pre-test analyzer (or system) calibration error test and for any subsequent recalibration(s) (percent of span value);

(H) Upscale gas concentration (mid or high gas level) used for each pre-run or post-run system bias check or (for dilution type reference method systems) for each pre-run or post-run system calibration error check;

(I) Analyzer response to the calibration gas for each pre-run or post-run system bias (or system calibration error) check;

(J) The arithmetic average of the analyzer responses to the zero-level gas, for each pair of pre- and post-run system bias (or system calibration error) checks;

(K) The arithmetic average of the analyzer responses to the upscale calibration gas, for each pair of pre- and post-run system bias (or system calibration error) checks;

(L) The results of each pre-run and each post-run system bias (or system calibration error) check using the zero-level gas (percentage of span value);

(M) The results of each pre-run and each post-run system bias (or system calibration error) check using the upscale calibration gas (percentage of span value);

(N) Calibration drift and zero drift of analyzer during each RATA run (percentage of span value);

(O) Moisture basis of the reference method analysis;

(P) Moisture content of stack gas, in percent, during each test run (if needed to convert to moisture basis of CEMS being tested);

(Q) Unadjusted (raw) average pollutant or diluent gas concentration for each run;

(R) Average pollutant or diluent gas concentration for each run, corrected for calibration bias (or calibration error) and, if applicable, corrected for moisture;

(S) The F-factor used to convert reference method data to units of lb/mmBtu (if applicable);

(T) Date(s) of the latest analyzer interference test(s);

(U) Results of the latest analyzer interference test(s);

(V) Date of the latest NO_2 to NO conversion test (Method 7E only);

(W) Results of the latest NO_2 to NO conversion test (Method 7E only); and

(X) For each calibration gas cylinder used during each RATA, record the cylinder gas vendor, cylinder number, expiration date, pollutant(s) in the cylinder, and certified gas concentration(s).

(v) For each test run of each moisture determination using Method 4 in appendix A to part 60 of this chapter (or its allowable alternatives), whether the determination is made to support a gas RATA, to support a flow RATA, or to quality assure the data from a continuous moisture monitoring system, record the following data elements (as applicable to the moisture measurement method used):

(A) Test number;

(B) Run number;

(C) The beginning date, hour, and minute of the run;

(D) The ending date, hour, and minute of the run;

(E) Unit operating level (low, mid, high, or normal, as appropriate);

(F) Moisture measurement method;

(G) Volume of H_2O collected in the impingers (ml);

(H) Mass of H_2O collected in the silica gel (g);

(I) Dry gas meter calibration factor;

(J) Average dry gas meter temperature (°F);

(K) Barometric pressure (inches of mercury);

(L) Differential pressure across the orifice meter (inches of H_2O);

(M) Initial and final dry gas meter readings (ft^3);

(N) Total sample gas volume, corrected to standard conditions (dscf); and

(O) Percentage of moisture in the stack gas (percent H_2O).

(vi) The raw data and calculated results for any stratification tests performed in accordance with sections 6.5.6.1 through 6.5.6.3 of appendix A to this part.

(8) For each certified continuous emission monitoring system, continuous opacity monitoring system, or alternative monitoring system, the date and description of each event which requires recertification of the system and the date and type of each test performed to recertify the system in accordance with § 75.20(b).

(9) When hardcopy relative accuracy test reports, certification reports, recertification reports, or semiannual or annual reports for gas or flow rate CEMS are required or requested under § 75.60(b)(6) or § 75.63, the reports shall include, at a minimum, the following elements (as applicable to the type(s) of test(s) performed):

(i) Summarized test results.

(ii) DAHS printouts of the CEMS data generated during the calibration error, linearity, cycle time, and relative accuracy tests.

(iii) For pollutant concentration monitor or diluent monitor relative accuracy tests at normal operating load:

(A) The raw reference method data from each run, i.e., the data under paragraph (a)(7)(iv)(Q) of this section (usually in the form of a computerized printout, showing a series of one-minute readings and the run average);

(B) The raw data and results for all required pre-test, post-test, pre-run and post-run quality assurance checks (i.e., calibration gas injections) of the reference method analyzers, i.e., the data under paragraphs (a)(7)(iv)(E) through (a)(7)(iv)(N) of this section;

(C) The raw data and results for any moisture measurements made during the relative accuracy testing, i.e., the data under paragraphs (a)(7)(v)(A) through (a)(7)(v)(O) of this section; and

(D) Tabulated, final, corrected reference method run data (i.e., the actual values used in the relative accuracy calculations), along with the equations used to convert the raw data to the final values and example calculations to demonstrate how the test data were reduced.

(iv) For relative accuracy tests for flow monitors:

(A) The raw flow rate reference method data, from Reference Method 2 (or its allowable alternatives) under appendix A to part 60 of this chapter, including auxiliary moisture data (often in the form of handwritten data sheets), i.e., the data under paragraphs (a)(7)(ii)(A) through (a)(7)(ii)(T), paragraphs (a)(7)(iii)(A) through (a)(7)(iii)(M), and, if applicable, paragraphs (a)(7)(v)(A) through (a)(7)(v)(O) of this section; and

(B) The tabulated, final volumetric flow rate values used in the relative accuracy calculations (determined from the flow rate reference method data and other necessary measurements, such as moisture, stack temperature and pressure), along with the equations used to convert the raw data to the final values and example calculations to demonstrate how the test data were reduced.

(v) Calibration gas certificates for the gases used in the linearity, calibration error, and cycle time tests and for the calibration gases used to quality assure the gas monitor reference method data during the relative accuracy test audit.

(vi) Laboratory calibrations of the source sampling equipment.

(vii) A copy of the test protocol used for the CEMS certifications or recertifications, including narrative that explains any testing abnormalities, problematic sampling, and analytical conditions that required a change to the test protocol, and/or solutions to

technical problems encountered during the testing program.

(viii) Diagrams illustrating test locations and sample point locations (to verify that locations are consistent with information in the monitoring plan). Include a discussion of any special traversing or measurement scheme. The discussion shall also confirm that sample points satisfy applicable acceptance criteria.

(ix) Names of key personnel involved in the test program, including test team members, plant contacts, agency representatives and test observers on site.

(10) Whenever reference methods are used as backup monitoring systems pursuant to § 75.20(d)(3), the owner or operator shall record the following information:

(i) For each test run using Reference Method 2 (or its allowable alternatives in appendix A to part 60 of this chapter) to determine volumetric flow rate, record the following data elements (as applicable to the measurement method used):

(A) Unit or stack identification number;

(B) Reference method system and component identification numbers;

(C) Run date and hour;

(D) The data in paragraph (a)(7)(ii) of this section, except for paragraphs (a)(7)(ii)(A), (F), (H), (L) and (Q) through (T); and

(E) The data in paragraph (a)(7)(iii)(A), except on a run basis.

(ii) For each reference method test run using Method 6C, 7E, or 3A in appendix A to part 60 of this chapter to determine SO_2, NO_X, CO_2, or O_2 concentration:

(A) Unit or stack identification number;

(B) The reference method system and component identification numbers;

(C) Run number;

(D) Run start date and hour;

(E) Run end date and hour;

(F) The data in paragraphs (a)(7)(iv)(B) through (I) and (L) through (O); and (G) Stack gas density adjustment factor (if applicable).

(iii) For each hour of each reference method test run using Method 6C, 7E, or 3A in appendix A to part 60 of this chapter to determine SO_2, NO_X, CO_2, or O_2 concentration:

(A) Unit or stack identification number;

(B) The reference method system and component identification numbers;

(C) Run number;

(D) Run date and hour;

(E) Pollutant or diluent gas being measured;

(F) Unadjusted (raw) average pollutant or diluent gas concentration for the hour; and

(G) Average pollutant or diluent gas concentration for the hour, adjusted as appropriate for moisture, calibration bias (or calibration error) and stack gas density.

(11) For each other quality-assurance test or other quality assurance activity, the owner or operator shall record the following (as applicable):

(i) Component/system identification code;

(ii) Parameter;

(iii) Test or activity completion date and hour;

(iv) Test or activity description;

(v) Test result;

(vi) Reason for test; and

(vii) Test code.

(12) For each request for a quality assurance test extension or exemption, for any loss of exempt status, and for each single-load flow RATA claim pursuant to section 2.3.1.3(c)(3) of appendix B to this part, the owner or operator shall record the following (as applicable):

(i) For a RATA deadline extension or exemption request:

(A) Monitoring system identification code;

(B) Date of last RATA;

(C) RATA expiration date without extension;

(D) RATA expiration date with extension;

(E) Type of RATA extension of exemption claimed or lost;

(F) Year to date hours of usage of fuel other than very low sulfur fuel;

(G) Year to date hours of non-redundant back-up CEMS usage at the unit/stack; and

(H) Quarter and year.

(ii) For a linearity test or flow-to-load ratio test quarterly exemption:

(A) Component-system identification code;

(B) Type of test;

(C) Basis for exemption;

(D) Quarter and year; and

(E) Span scale.

(iii) For a quality assurance test extension claim based on a grace period:

(A) Component-system identification code;

(B) Type of test;

(C) Beginning of grace period;

(D) Date and hour of completion of required quality assurance test;

(E) Number of unit or stack operating hours from the beginning of the grace period to the completion of the quality assurance test or the maximum allowable grace period; and

(F) Date and hour of end of grace period.

(iv) For a fuel flowmeter accuracy test extension:

(A) Component-system identification code;

(B) Date of last accuracy test;

(C) Accuracy test expiration date without extension;

(D) Accuracy test expiration date with extension;

(E) Type of extension; and

(F) Quarter and year.

(v) For a single-load flow RATA claim:

(A) Monitoring system identification code;

(B) Ending date of last annual flow RATA;

(C) The relative frequency (percentage) of unit or stack operation at each load level (low, mid, and high) since the previous annual flow RATA, to the nearest 0.1 percent.

(D) End date of the historical load data collection period; and

(E) Indication of the load level (low, mid or high) claimed for the single-load flow RATA.

(13) An indication that data have been excluded from a periodic span and range evaluation of an SO_2 or NO_X monitor under section 2.1.1.5 or 2.1.2.5 of appendix A to this part and the reason(s) for excluding the data. For purposes of reporting under § 75.64(a)(2), this information shall be reported with the quarterly report as descriptive text consistent with § 75.64(g).

(b) *Excepted monitoring systems for gas-fired and oil-fired units.* The owner or operator shall record the applicable information in this section for each excepted monitoring system following the requirements of appendix D to this part or appendix E to this part for determining and recording emissions from an affected unit.

(1) For certification and quality assurance testing of fuel flowmeters tested against a reference fuel flow rate (i.e., flow rate from another fuel flowmeter under section 2.1.5.2 of appendix D to this part or flow rate from a procedure according to a standard incorporated by reference under section 2.1.5.1 of appendix D to this part):

(i) Unit or common pipe header identification code;

(ii) Component and system identification codes of the fuel flowmeter being tested;

(iii) Date and hour of test completion, for a test performed in-line at the unit;

(iv) Date and hour of flowmeter reinstallation, for laboratory tests;

(v) Test number;

(vi) Upper range value of the fuel flowmeter;

(vii) Flowmeter measurements during accuracy test (and mean of values), including units of measure;

(viii) Reference flow rates during accuracy test (and mean of values), including units of measure;

(ix) Level of fuel flowrate test during runs (low, mid or high);

(x) Average flowmeter accuracy for low and high fuel flowrates and highest flowmeter accuracy of any level designated as mid, expressed as a percent of upper range value;

(xi) Indicator of whether test method was a lab comparison to reference meter or an in-line comparison against a master meter;

(xii) Test result (aborted, pass, or fail); and

(xiii) Description of fuel flowmeter calibration specification or procedure (in the certification application, or periodically if a different method is used for annual quality assurance testing).

(2) For each transmitter or transducer accuracy test for an orifice-, nozzle-, or venturi-type flowmeter used under section 2.1.6 of appendix D to this part:

(i) Component and system identification codes of the fuel flowmeter being tested;

(ii) Completion date and hour of test;

(iii) For each transmitter or transducer: transmitter or transducer type (differential pressure, static pressure, or temperature); the full-scale value of the transmitter or transducer, transmitter input (pre-calibration) prior to accuracy test, including units of measure; and expected transmitter output during accuracy test (reference value from NIST-traceable equipment), including units of measure;

(iv) For each transmitter or transducer tested: output during accuracy test, including units of measure; transmitter or transducer accuracy as a percent of the full-scale value; and transmitter output level as a percent of the full-scale value;

(v) Average flowmeter accuracy at low and high fuel flowrates and highest flowmeter accuracy of any level designated as mid fuel flowrate, expressed as a percent of upper range value;

(vi) Test result (pass, fail, or aborted);

(vii) Test number; and

(viii) Accuracy determination methodology.

(3) For each visual inspection of the primary element or transmitter or transducer accuracy test for an orifice-, nozzle-, or venturi-type flowmeter under sections 2.1.6.1 through 2.1.6.4 of appendix D to this part:

(i) Date of inspection/test;

(ii) Hour of completion of inspection/test;

(iii) Component and system identification codes of the fuel flowmeter being inspected/tested; and

(iv) Results of inspection/test (pass or fail).

(4) For fuel flowmeters that are tested using the optional fuel flow-to-load ratio procedures of section 2.1.7 of appendix D to this part:

(i) Test data for the fuel flowmeter flow-to-load ratio or gross heat rate check, including:

(A) Component/system identification code;

(B) Calendar year and quarter;

(C) Indication of whether the test is for fuel flow-to-load ratio or gross heat rate;

(D) Quarterly average absolute percent difference between baseline for fuel flow-to-load ratio (or baseline gross heat rate and hourly quarterly fuel flow-to-load ratios (or gross heat rate value);

(E) Test result;

(F) Number of hours used in the analysis;

(G) Number of hours excluded due to co-firing;

(H) Number of hours excluded due to ramping; and

(I) Number of hours excluded in lower 25.0 percent range of operation.

(ii) Reference data for the fuel flowmeter flow-to-load ratio or gross heat rate evaluation, including:

(A) Completion date and hour of most recent primary element inspection;

(B) Completion date and hour of most recent flowmeter or transmitter accuracy test;

(C) Beginning date and hour of baseline period;

(D) Completion date and hour of baseline period;

(E) Average fuel flow rate, in 100 scfh for gas and lb/hr for oil;

(F) Average load, in megawatts or 1000 lb/hr of steam;

(G) Baseline fuel flow-to-load ratio, in the appropriate units of measure (if using fuel flow-to-load ratio);

(H) Baseline gross heat rate if using gross heat rate, in the appropriate units of measure (if using gross heat rate check);

(I) Number of hours excluded from baseline data due to ramping;

(J) Number of hours excluded from baseline data in lower 25.0 percent of range of operation;

(K) Average hourly heat input rate; and

(L) Flag indicating baseline data collection is in progress and that fewer than four calendar quarters have elapsed since the quarter of the last flowmeter QA test.

(5) For gas-fired peaking units or oil-fired peaking units using the optional procedures of appendix E to this part, for each initial performance, periodic, or quality assurance/quality control-related test:

(i) For each run of emission data, record the following data:

(A) Unit or common pipe identification code;

(B) Monitoring system identification code for appendix E system;

(C) Run start date and time;

(D) Run end date and time;

(E) Total heat input during the run (mmBtu);

(F) NO_X emission rate (lb/mmBtu) from reference method;

(G) Response time of the O_2 and NO_X reference method analyzers;

(H) Type of fuel(s) combusted during the run;

(I) Heat input rate (mmBtu/hr) during the run;

(J) Test number;

(K) Run number;

(L) Operating level during the run;

(M) NO_X concentration recorded by the reference method during the run;

(N) Diluent concentration recorded by the reference method during the run; and

(O) Moisture measurement for the run (if applicable).

(ii) For each run during which oil or mixed fuels are combusted record the following data:

(A) Unit or common pipe identification code;

(B) Monitoring system identification code for oil monitoring system;

(C) Run start date and time;

(D) Run end date and time;

(E) Mass flow or volumetric flow of oil, in the units of measure for the type of fuel flowmeter;

(F) Gross calorific value of oil in the appropriate units of measure;

(G) Density of fuel oil in the appropriate units of measure (if density is used to convert oil volume to mass);

(H) Hourly heat input (mmBtu) during run from oil;

(I) Test number;

(J) Run number; and

(K) Operating level during the run.

(iii) For each run during which gas or mixed fuels are combusted record the following data:

(A) Unit or common pipe identification code;

(B) Monitoring system identification code for gas monitoring system;

(C) Run start date and time;

(D) Run end date and time;

(E) Volumetric flow of gas (100 scf);

(F) Gross calorific value of gas (Btu/100 scf);

(G) Hourly heat input (mmBtu) during run from gas;

(H) Test number;

(I) Run number; and

(J) Operating level during the run.

(iv) For each operating level at which runs were performed:

(A) Completion date and time of last run for operating level;

(B) Type of fuel(s) combusted during test;

(C) Average heat input rate at that operating level (mmBtu/hr);

(D) Arithmetic mean of NO_X emission rates from reference method run at this level;

(E) F-factor used in calculations of NO_X emission rate at that operating level;

(F) Unit operating parametric data related to NO_X formation for that unit type (e.g., excess O_2 level, water/fuel ratio);

(G) Test number; and

(H) Operating level for runs.

(c) For units with add-on SO_2 or NO_X emission controls following the provisions of § 75.34(a)(1) or (a)(2), the owner or operator shall keep the following records on-site in the quality assurance/quality control plan required by section 1 of appendix B to this part:

(1) A list of operating parameters for the add-on emission controls, including parameters in § 75.55(b) or § 75.58(b), appropriate to the particular installation of add-on emission controls; and

(2) The range of each operating parameter in the list that indicates the add-on emission controls are properly operating.

(d) *Excepted monitoring for low mass emissions units under § 75.19(c)(1)(iv).* For oil-and gas-fired units using the optional SO_2, NO_X and CO_2 emissions calculations for low mass emission units under § 75.19, the owner or operator shall record the following information for tests performed to determine a fuel and unit-specific default as provided in § 75.19(c)(1)(iv):

(1) For each run of each test performed under section 2.1 of appendix E to this part, record the following data:

(i) Unit or common pipe identification code;

(ii) Run start date and time;

(iii) Run end date and time;

(iv) NO_X emission rate (lb/mmBtu) from reference method;

(v) Response time of the O_2 and NO_X reference method analyzers;

(vi) Type of fuel(s) combusted during the run;

(vii) Test number;

(viii) Run number;

(ix) Operating level during the run;

(x) NO_X concentration recorded by the reference method during the run;

(xi) Diluent concentration recorded by the reference method during the run;

(xii) Moisture measurement for the run (if applicable);

(xiii) An indicator that the resulting NO_X emission rate is the highest NO_X emission rate record during any run of the test (if appropriate);

(xiv) The default NO_X emission rate (highest NO_X emission rate value during the test multiplied by 1.15);

(xv) An indicator that control equipment was operating or not operating during each run of the test; and

(xvi) Parameter data indicating the use and efficacy of control equipment during the test.

(2) For each unit in a group of identical units qualifying for reduced testing under § 75.19(c)(1)(iv)(B), record the following data:

(i) The unique group identification code assigned to the group. This code must include the ORIS code of one of the units in the group;

(ii) The ORIS code or facility identification code for the unit;

(iii) The plant name of the facility at which the unit is located, consistent with the facility's monitoring plan;

(iv) The identification code for the unit, consistent with the facility's monitoring plan;

(v) A record of whether or not the unit underwent fuel and unit-specific testing for purposes of establishing a fuel and unit-specific NO_X emission rate for purposes of § 75.19;

(vi) The completion date of the fuel and unit-specific test performed for purposes of establishing a fuel and unit-specific NO_X emission rate for purposes of § 75.19;

(vii) The fuel and unit-specific NO_X default rate established for the group of identical units under § 75.19;

(viii) The type of fuel combusted for the units during testing and represented by the resulting default NO_X emission rate;

(ix) The control status for the units during testing and represented by the resulting default NO_X emission rate;

(x) Documentation supporting the qualification of all units in the group for reduced testing based on the criteria established in §§ 75.19(c)(1)(iv)(B)(*1*) and (*3*); and

(xi) Purpose of group tests.

Subpart G—Reporting Requirements

43. Section 75.60 is amended by revising paragraphs (a), (b)(1), and (b)(2) and by adding new paragraphs (b)(3), (b)(4), (b)(5) and (b)(6) to read as follows:

§ 75.60 General provisions.

(a) The designated representative for any affected unit subject to the requirements of this part shall comply with all reporting requirements in this section and with the signatory requirements of § 72.21 of this chapter for all submissions.

(b) * * *

(1) *Initial certifications.* The designated representative shall submit initial certification applications according to § 75.63.

(2) *Recertifications.* The designated representative shall submit recertification applications according to § 75.63.

(3) *Monitoring plans.* The designated representative shall submit monitoring plans according to § 75.62.

(4) *Electronic quarterly reports.* The designated representative shall submit electronic quarterly reports according to § 75.64.

(5) *Other petitions and communications.* The designated representative shall submit petitions, correspondence, application forms, designated representative signature, and petition-related test results in hardcopy to the Administrator. Additional petition requirements are specified in §§ 75.66 and 75.67.

(6) *Semiannual or annual RATA reports.* If requested by the applicable EPA Regional Office, appropriate State, and/or appropriate local air pollution control agency, the designated representative shall submit a hardcopy RATA report within 45 days after completing a required semiannual or annual RATA according to section 2.3.1 of appendix B to this part, or within 15 days of receiving the request, whichever is later. The designated representative shall report the hardcopy information required by § 75.59(a)(9) to the applicable EPA Regional Office, appropriate State, and/or appropriate local air pollution control agency that requested the RATA report.

* * * * *

44. Section 75.61 is amended by revising paragraphs (a) introductory text, (a)(1) introductory text, and (b), by adding a new sentence to the end of paragraph (a)(6)(ii), and by adding a new paragraph (a)(1)(iv) to read as follows:

§ 75.61 Notifications.

(a) *Submission.* The designated representative for an affected unit (or owner or operator, as specified) shall submit notice to the Administrator, to the appropriate EPA Regional Office, and to the applicable State and local air pollution control agencies for the following purposes, as required by this part.

(1) *Initial certification and recertification test notifications.* The owner or operator or designated representative for an affected unit shall submit written notification of initial certification tests, recertification tests, and revised test dates as specified in

§ 75.20 for continuous emission monitoring systems, for alternative monitoring systems under subpart E of this part, or for excepted monitoring systems under appendix E to this part, except as provided in paragraphs (a)(1)(iii), (a)(1)(iv) and (a)(4) of this section and except for testing only of the data acquisition and handling system.

* * * * *

(iv) *Waiver from notification requirements.* The Administrator, the appropriate EPA Regional Office, or the applicable State or local air pollution control agency may issue a waiver from the notification requirement of paragraph (a)(1) of this section, for a unit or a group of units, for one or more recertification tests. The Administrator, the appropriate EPA Regional Office, or the applicable State or local air pollution control agency may also discontinue the waiver and reinstate the notification requirement of paragraph (a)(1) of this section for future recertification tests of a unit or a group of units.

* * * * *

(6) * * *

(ii) * * * The reporting requirements of this paragraph (a)(6)(ii) also shall apply if the designated representative of a unit is exempt from certifying a fuel flowmeter for use during the combustion of emergency fuel under section 2.1.4.3 of appendix D to this part.

(b) The owner or operator or designated representative shall submit notification of certification tests and recertification tests for continuous opacity monitoring systems as specified in § 75.20(c)(8) to the State or local air pollution control agency.

* * * * *

45. Section 75.62 is amended by revising the title of the section and revising paragraphs (a) and (c) to read as follows:

§ 75.62 Monitoring plan submittals.

(a) *Submission.*—(1) *Electronic.* Using the format specified in paragraph (c) of this section, the designated representative for an affected unit shall submit a complete, electronic, up-to-date monitoring plan file (except for hardcopy portions identified in paragraph (a)(2) of this section) to the Administrator as follows: no later than 45 days prior to the initial certification test; at the time of recertification application submission; and in each electronic quarterly report.

(2) *Hardcopy.* The designated representative shall submit all of the hardcopy information required under § 75.53 to the appropriate EPA Regional Office and the appropriate State and/or local air pollution control agency prior to initial certification. Thereafter, the designated representative shall submit hardcopy information only if that portion of the monitoring plan is revised. The designated representative shall submit the required hardcopy information as follows: no later than 45 days prior to the initial certification test; with any recertification application, if a hardcopy monitoring plan change is associated with the recertification event; and within 30 days of any other event with which a hardcopy monitoring plan change is associated, pursuant to § 75.53(b). Electronic submittal of all monitoring plan information, including hardcopy portions, is permissible provided that a paper copy of the hardcopy portions can be furnished upon request.

* * * * *

(c) *Format.* The designated representative shall submit each monitoring plan in a format specified by the Administrator.

46. Section 75.63 is revised to read as follows:

§ 75.63 Initial certification or recertification application submittals.

(a) *Submission.* The designated representative for an affected unit or a combustion source shall submit applications and reports as follows:

(1) *Initial certifications.* (i) Within 45 days after completing all initial certification tests, submit to the Administrator the electronic information required by paragraph (b)(1) of this section and a hardcopy certification application form (EPA form 7610–14). Except for subpart E applications for alternative monitoring systems or unless specifically requested by the Administrator, do not submit a hardcopy of the test data and results to the Administrator.

(ii) Within 45 days after completing all initial certification tests, submit the hardcopy information required by paragraph (b)(2) to the applicable EPA Regional Office and the appropriate State and/or local air pollution control agency.

(iii) For units for which the owner or operator is applying for certification approval of the optional excepted methodology under § 75.19 for low mass emissions units, submit:

(A) To the Administrator, the electronic information required by paragraph (b)(1)(i), the hardcopy information required by paragraph (b)(2), and a hardcopy certification application form (EPA form 7610–14); and

(B) To the applicable EPA Regional Office and appropriate State and/or local air pollution control agency, the hardcopy information required by paragraphs (b)(2)(i), (iii), and (iv).

(2) *Recertifications.* (i) Within 45 days after completing all recertification tests, submit to the Administrator the electronic information required by paragraph (b)(1) and a hardcopy certification application form (EPA form 7610–14). Except for subpart E applications for alternative monitoring systems or unless specifically requested by the Administrator, do not submit a hardcopy of the test data and results to the Administrator.

(ii) Within 45 days after completing all recertification tests, submit the hardcopy information required by paragraph (b)(2) to the applicable EPA Regional Office and the appropriate State and/or local air pollution control agency. The applicable EPA Regional Office or appropriate State or local air pollution control agency may waive the requirement for submission to it of a hardcopy recertification. The applicable EPA Regional Office or the appropriate State or local air pollution control agency may also discontinue the waiver and reinstate the requirement of this paragraph to provide a hardcopy report of the recertification test data and results.

(iii) Notwithstanding the requirements of paragraphs (a)(2)(i) and (a)(2)(ii) of this section, for an event for which the Administrator determines that only diagnostic tests (see § 75.20(b)) are required, no hardcopy submittal is required; however, the results of all diagnostic test(s) shall be submitted in the electronic quarterly report required under § 75.64. For DAHS (missing data and formula) verifications, neither a hardcopy nor an electronic submittal of any kind is required; the owner or operator shall keep these test results on-site in a format suitable for inspection.

(b) *Contents.* Each application for initial certification or recertification shall contain the following information, as applicable:

(1) *Electronic.* (i) A complete, up-to-date version of the electronic portion of the monitoring plan, according to §§ 75.53(c) and (d), or §§ 75.53(e) and (f), as applicable, in the format specified in § 75.62(c).

(ii) The results of the test(s) required by § 75.20, including the type of test conducted, testing date, information required by § 75.56 or § 75.59, as applicable, and the results of any failed tests that affect data validation.

(2) *Hardcopy.* (i) Any changed portions of the hardcopy monitoring plan information required under

§§ 75.53(c) and (d), or §§ 75.53(e) and (f), as applicable. Electronic submittal of all monitoring plan information, including the hardcopy portions, is permissible, provided that a paper copy can be furnished upon request.

(ii) The results of the test(s) required by § 75.20, including the type of test conducted, testing date, information required by § 75.59(a)(9), and the results of any failed tests that affect data validation.

(iii) Certification or recertification application form (EPA form 7610–14).

(iv) Designated representative signature.

(c) *Format.* The electronic portion of each certification or recertification application shall be submitted in a format to be specified by the Administrator. The hardcopy test results shall be submitted in a format suitable for review and shall include the information in § 75.59(a)(9).

47. Section 75.64 is revised to read as follows:

§ 75.64 Quarterly reports.

(a) *Electronic submission.* The designated representative for an affected unit shall electronically report the data and information in paragraphs (a), (b), and (c) of this section to the Administrator quarterly, beginning with the data from the later of: the last (partial) calendar quarter of 1993 (where the calendar quarter data begins at November 15, 1993); or the calendar quarter corresponding to the date of provisional certification; or the calendar quarter corresponding to the relevant deadline for initial certification in § 75.4(a), (b), or (c), whichever quarter is earlier. The initial quarterly report shall contain hourly data beginning with the hour of provisional certification or the hour corresponding to the relevant certification deadline, whichever is earlier. For an affected unit subject to § 75.4(d) that is shutdown on the relevant compliance date in § 75.4(a), the owner or operator shall submit quarterly reports for the unit beginning with the data from the quarter in which the unit recommences commercial operation (where the initial quarterly report contains hourly data beginning with the first hour of recommenced commercial operation of the unit). For any provisionally-certified monitoring system, § 75.20(a)(3) shall apply for initial certifications, and § 75.20(b)(5) shall apply for recertifications. Each electronic report must be submitted to the Administrator within 30 days following the end of each calendar quarter. Each electronic report shall include the date of report generation for the information provided in paragraphs (a)(2) through (a)(11) of this section, and shall also include for each affected unit (or group of units using a common stack):

(1) Facility information:

(i) Identification, including:

(A) Facility/ORISPL number;

(B) Calendar quarter and year for the data contained in the report; and

(C) Version of the electronic data reporting format used for the report.

(ii) Location, including:

(A) Plant name and facility ID;

(B) EPA AIRS facility system ID;

(C) State facility ID;

(D) Source category/type;

(E) Primary SIC code;

(F) State postal abbreviation;

(G) County code; and

(H) Latitude and longitude.

(2) The information and hourly data required in §§ 75.53 through 75.59, excluding the following:

(i) Descriptions of adjustments, corrective action, and maintenance;

(ii) Information which is incompatible with electronic reporting (e.g., field data sheets, lab analyses, quality control plan);

(iii) Opacity data listed in § 75.54(f) or § 75.57(f), and in § 75.59(a)(8);

(iv) For units with SO_2 or NO_X add-on emission controls that do not elect to use the approved site-specific parametric monitoring procedures for calculation of substitute data, the information in § 75.55(b)(3) or § 75.58(b)(3);

(v) The information recorded under § 75.56(a)(7) for the period prior to April 1, 2000;

(vi) Information required by § 75.54(g) or § 75.57(h) concerning the causes of any missing data periods and the actions taken to cure such causes;

(vii) Hardcopy monitoring plan information required by § 75.53 and hardcopy test data and results required by § 75.56 or § 75.59;

(viii) Records of flow monitor and moisture monitoring system polynomial equations, coefficients or ''K'' factors required by § 75.56(a)(5)(vii), § 75.56(a)(5)(ix), § 75.59(a)(5)(vi) or § 75.59(a)(5)(vii);

(ix) Daily fuel sampling information required by § 75.58(c)(3)(i) for units using assumed values under appendix D;

(x) Information required by §§ 75.59(b)(1)(vi), (vii), (viii), (ix), and (xiii), and (b)(2)(iii) and (iv) concerning fuel flowmeter accuracy tests and transmitter/transducer accuracy tests;

(xi) Stratification test results required as part of the RATA supplementary records under §§ 75.56(a)(7) or 75.59(a)(7);

(xii) Data and results of RATAs that are aborted or invalidated due to problems with the reference method or operational problems with the unit and data and results of linearity checks that are aborted or invalidated due to problems unrelated to monitor performance; and

(xiv) Supplementary RATA information required under § 75.59(a)(7)(i) through § 75.59(a)(7)(v), except that: the data under § 75.59(a)(7)(ii)(A) through (T) and the data under § 75.59(a)(7)(iii)(A) through (M) shall, as applicable, be reported for flow RATAs in which angular compensation (measurement of pitch and/or yaw angles) is used and for flow RATAs in which a site-specific wall effects adjustment factor is determined by direct measurement; and the data under § 75.59(a)(7)(ii)(T) shall be reported for all flow RATAs in which a default wall effects adjustment factor is applied.

(3) Tons (rounded to the nearest tenth) of SO_2 emitted during the quarter and cumulative SO_2 emissions for the calendar year.

(4) Average NO_X emission rate (lb/mmBtu, rounded to the nearest hundredth prior to April 1, 2000 and to the nearest thousandth on and after April 1, 2000) during the quarter and cumulative NO_X emission rate for the calendar year.

(5) Tons of CO_2 emitted during quarter and cumulative CO_2 emissions for calendar year.

(6) Total heat input (mmBtu) for quarter and cumulative heat input for calendar year.

(7) Unit or stack or common pipe header operating hours for quarter and cumulative unit or stack or common pipe header operating hours for calendar year.

(8) If the affected unit is using a qualifying Phase I technology, then the quarterly report shall include the information required in paragraph (e) of this section.

(9) For low mass emissions units for which the owner or operator is using the optional low mass emissions methodology in § 75.19(c) to calculate NO_X mass emissions, the designated representative must also report tons (rounded to the nearest tenth) of NO_X emitted during the quarter and cumulative NO_X mass emissions for the calendar year.

(10) For low mass emissions units using the optional long term fuel flow methodology under § 75.19(c), for each quarter report the long term fuel flow for each fuel according to § 75.59.

(11) For units using the optional fuel flow to load procedure in section 2.1.7 of appendix D to this part, report both the fuel flow-to-load baseline data and

the results of the fuel flow-to-load test each quarter.

(b) The designated representative shall affirm that the component/system identification codes and formulas in the quarterly electronic reports, submitted to the Administrator pursuant to § 75.53, represent current operating conditions.

(c) *Compliance certification.* The designated representative shall submit a certification in support of each quarterly emissions monitoring report based on reasonable inquiry of those persons with primary responsibility for ensuring that all of the unit's emissions are correctly and fully monitored. The certification shall indicate whether the monitoring data submitted were recorded in accordance with the applicable requirements of this part including the quality control and quality assurance procedures and specifications of this part and its appendices, and any such requirements, procedures and specifications of an applicable excepted or approved alternative monitoring method. For a unit with add-on emission controls, the designated representative shall also include a certification, for all hours where data are substituted following the provisions of § 75.34(a)(1), that the add-on emission controls were operating within the range of parameters listed in the monitoring plan and that the substitute values recorded during the quarter do not systematically underestimate SO_2 or NO_X emissions, pursuant to § 75.34.

(d) *Electronic format.* Each quarterly report shall be submitted in a format to be specified by the Administrator, including both electronic submission of data and electronic or hardcopy submission of compliance certifications.

(e) *Phase I qualifying technology reports.* In addition to reporting the information in paragraphs (a), (b), and (c) of this section, the designated representative for an affected unit on which SO_2 emission controls have been installed and operated for the purpose of meeting qualifying Phase I technology requirements pursuant to § 72.42 of this chapter shall also submit reports documenting the measured percent SO_2 emissions removal to the Administrator on a quarterly basis, beginning the first quarter of 1997 and continuing through the fourth quarter of 1999. Each report shall include all measurements and calculations necessary to substantiate that the qualifying technology achieves the required percent reduction in SO_2 emissions.

(f) *Method of submission.* Beginning with the quarterly report for the first quarter of the year 2001, all quarterly reports shall be submitted to EPA by direct computer-to-computer electronic transfer via modem and EPA-provided software, unless otherwise approved by the Administrator.

(g) Any cover letter text accompanying a quarterly report shall either be submitted in hardcopy to the Agency or be provided in electronic format compatible with the other data required to be reported under this section.

48. Section 75.65 is revised to read as follows:

§ 75.65 Opacity reports.

The owner or operator or designated representative shall report excess emissions of opacity recorded under § 75.54(f) or § 75.57(f), as applicable, to the applicable State or local air pollution control agency.

49. Section 75.66 is amended by revising paragraph (a) and the first sentence of paragraph (e) introductory text; by redesignating paragraph (i) as paragraph (l) and revising it; and by adding paragraphs (i) through (k) to read as follows:

§ 75.66 Petitions to the Administrator.

(a) *General.* The designated representative for an affected unit subject to the requirements of this part may submit a petition to the Administrator requesting that the Administrator exercise his or her discretion to approve an alternative to any requirement prescribed in this part or incorporated by reference in this part. Any such petition shall be submitted in accordance with the requirements of this section. The designated representative shall comply with the signatory requirements of § 72.21 of this chapter for each submission.

* * * * *

(e) *Parametric monitoring procedure petitions.* The designated representative for an affected unit may submit a petition to the Administrator, where each petition shall contain the information specified in § 75.55(b) or § 75.58(b), as applicable, for the use of a parametric monitoring method. * * * * * * * * *

(i) *Emergency fuel petition.* The designated representative for an affected unit may submit a petition to the Administrator to use the emergency fuel provisions in section 2.1.4 of appendix E to this part. The designated representative shall include the following information in the petition:

(1) Identification of the affected plant and unit(s);

(2) A procedure for determining the NO_X emission rate for the unit when the emergency fuel is combusted; and

(3) A demonstration that the permit restricts use of the fuel to emergencies only.

(j) *Petition for alternative method of accounting for emissions prior to completion of certification tests.* The designated representative for an affected unit may submit a petition to the Administrator to use an alternative to the procedures in § 75.4(d)(3), (e)(3), (f)(3) or (g)(3) to account for emissions during the period between the compliance date for a unit and the completion of certification testing for that unit. The designated representative shall include:

(1) Identification of the affected unit(s);

(2) A detailed explanation of the alternative method to account for emissions of the following parameters, as applicable: SO_2 mass emissions (in lbs), NO_X emission rate (in lbs/mmBtu), CO_2 mass emissions (in lbs) and, if the unit is subject to the requirements of subpart H of this part, NO_X mass emissions (in lbs); and

(3) A demonstration that the proposed alternative does not underestimate emissions.

(k) *Petition for an alternative to the stabilization criteria for the cycle time test in section 6.4 of appendix A to this part.* The designated representative for an affected unit may submit a petition to the Administrator to use an alternative stabilization criteria for the cycle time test in section 6.4 of appendix A to this part, if the installed monitoring system does not record data in 1-minute or 3-minute intervals. The designated representative shall provide a description of the alternative criteria.

(l) *Any other petitions to the Administrator under this part.* Except for petitions addressed in paragraphs (b) through (k) of this section, any petition submitted under this paragraph shall include sufficient information for the evaluation of the petition, including, at a minimum, the following information:

(1) Identification of the affected plant and unit(s);

(2) A detailed explanation of why the proposed alternative is being suggested in lieu of the requirement;

(3) A description and diagram of any equipment and procedures used in the proposed alternative, if applicable;

(4) A demonstration that the proposed alternative is consistent with the purposes of the requirement for which the alternative is proposed and is consistent with the purposes of this part and of section 412 of the Act and that any adverse effect of approving such alternative will be *de minimis*; and

(5) Any other relevant information that the Administrator may require.

Subpart H—NO_X Mass Emissions Provisions

50. Section 75.70 is amended by revising paragraphs (e), (f) introductory text and (f)(1)(iv), and by adding new paragraph (g)(6) to read as follows:

§ 75.70 NO_X mass emissions provisions.

* * * * *

(e) *Quality assurance and quality control requirements.* For units that use continuous emission monitoring systems to account for NO_X mass emissions, the owner or operator shall meet the applicable quality assurance and quality control requirements in § 75.21, appendix B to this part, and § 75.74(c) for the NO_X-diluent continuous emission monitoring systems, flow monitoring systems, NO_X concentration monitoring systems, and diluent monitors required under § 75.71. A NO_X concentration monitoring system for determining NO_X mass emissions in accordance with § 75.71 shall meet the same certification testing requirements, quality assurance requirements, and bias test requirements as are specified in this part for an SO_2 pollutant concentration monitor, except as otherwise provided in § 75.74(c). Units using excepted methods under § 75.19 shall meet the applicable quality assurance requirements of that section, and, except as otherwise provided in § 75.74(c), units using excepted monitoring methods under appendices D and E to this part shall meet the applicable quality assurance requirements of those appendices.

(f) *Missing data procedures.* Except as provided in § 75.34, paragraph (g) of this section, and § 75.74, the owner or operator shall provide substitute data from monitoring systems required under § 75.71 for each affected unit as follows:

(1) * * *

(iv) A valid, quality-assured hour of NO_X concentration data (in ppm) has not been measured and recorded by a certified NO_X concentration monitoring system, or by an approved alternative monitoring method under subpart E of this part, where the owner or operator chooses to use a NO_X concentration monitoring system with a volumetric flow monitor, and without a diluent monitor to calculate NO_X mass emissions. The initial missing data procedures for determining monitor data availability and the standard missing data procedures for a NO_X concentration monitoring system shall be the same as the procedures specified for a NO_X-diluent continuous emission monitoring system under §§ 75.31, 75.32 and 75.33.

* * * * *

(g) * * *

(6) For any unit using continuous emissions monitors, the procedures in § 75.20(b)(3).

* * * * *

51. Section 75.71 is amended by revising paragraphs (b) and (d)(2) to read as follows:

§ 75.71 Specific provisions for monitoring NO_X emission rate and heat input for the purpose of calculating NO_X mass emissions.

* * * * *

(b) *Moisture correction.* (1) If a correction for the stack gas moisture content is needed to properly calculate the NO_X emission rate in lb/mmBtu (i.e., if the NO_X pollutant concentration monitor in a NO_X-diluent monitoring system measures on a different moisture basis from the diluent monitor), the owner or operator of an affected unit shall account for the moisture content of the flue gas on a continuous basis in accordance with § 75.12(b).

(2) If a correction for the stack gas moisture content is needed to properly calculate NO_X mass emissions in tons, in the case where a NO_X concentration monitoring system which measures on a dry basis is used with a flow rate monitor to determine NO_X mass emissions, the owner or operator of an affected unit shall account for the moisture content of the flue gas on a continuous basis in accordance with § 75.11(b) except that the term ''SO_2'' shall be replaced by the term ''NO_X.''

(3) If a correction for the stack gas moisture content is needed to properly calculate NO_X mass emissions, in the case where a diluent monitor that measures on a dry basis is used with a flow rate monitor to determine heat input, which is then multiplied by the NO_X emission rate, the owner or operator shall install, operate, maintain and quality assure a continuous moisture monitoring system, as described in § 75.11(b).

* * * * *

(d) * * *

(2) Use the procedures in appendix D to this part for determining hourly heat input and the procedure specified in appendix E to this part for estimating hourly NO_X emission rate. However, the heat input apportionment provisions in section 2.1.2 of appendix D to this part shall not be used to meet the NO_X mass reporting provisions of this subpart. In addition, if after certification of an excepted monitoring system under appendix E to this part, the operation of a unit that reports emissions on an annual basis under § 75.74(a) of this part exceeds a capacity factor of 20.0 percent in any calendar year or exceeds an annual capacity factor of 10.0 percent averaged over three years, or the operation of a unit that reports emissions on an ozone season basis under § 75.74(b) of this part exceeds a capacity factor of 20.0 percent in any ozone season or exceeds an ozone season capacity factor of 10.0 percent averaged over three years, the owner or operator shall meet the requirements of paragraph (c) of this section or, if applicable, paragraph (e) of this section by no later than December 31 of the following calendar year.

* * * * *

52. Text is added to reserved section 75.73 to read as follows:

§ 75.73 Recordkeeping and reporting.

(a) *General recordkeeping provisions.* The owner or operator of any affected unit shall maintain for each affected unit and each non-affected unit under § 75.72(b)(2)(ii) a file of all measurements, data, reports, and other information required by this part at the source in a form suitable for inspection for at least three (3) years from the date of each record. Except for the certification data required in § 75.57(a)(4) and the initial submission of the monitoring plan required in § 75.57(a)(5), the data shall be collected beginning with the earlier of the date of provisional certification or the deadline in § 75.70. The certification data required in § 75.57(a)(4) shall be collected beginning with the date of the first certification test performed. The file shall contain the following information:

(1) The information required in §§ 75.57(a)(2), (a)(4), (a)(5), (a)(6), (b), (c)(2), (d), (g), and (h).

(2) The information required in §§ 75.58(b)(2) or (b)(3) (for units with add-on NO_X emission controls), as applicable, (d) (as applicable for units using Appendix E to this part), and (f) (as applicable for units using the low mass emissions unit provisions of § 75.19).

(3) For each hour when the unit is operating, NO_X mass emissions, calculated in accordance with section 8.1 of appendix F to this part.

(4) During the second and third calendar quarters, cumulative ozone season heat input and cumulative ozone season operating hours.

(5) Heat input and NO_X methodologies for the hour.

(6) *Specific heat input record provisions for gas-fired or oil-fired units using the procedures in appendix D to this part.* In lieu of the information required in § 75.57(c)(2), the owner or operator shall record the following information in this paragraph for each

affected gas-fired or oil-fired unit and each non-affected gas- or oil-fired unit under § 75.72(b)(2)(ii) for which the owner or operator is using the procedures in appendix D to this part for estimating heat input:

(i) For each hour when the unit is combusting oil:

(A) Date and hour;

(B) Hourly average mass flow rate of oil, while the unit combusts oil (in lb/hr, rounded to the nearest tenth) (flag value if derived from missing data procedures);

(C) Method of oil sampling (flow proportional, continuous drip, as delivered, manual from storage tank, or daily manual);

(D) For units using volumetric flowmeters, volumetric flow rate of oil combusted each hour (in gal/hr, lb/hr, m^3/hr, or bbl/hr, rounded to the nearest tenth) (flag value if derived from missing data procedures);

(E) For units using volumetric oil flowmeters, density of oil (flag value if derived from missing data procedures);

(F) Gross calorific value of oil used to determine heat input (in Btu/lb);

(G) Hourly heat input rate during combustion of oil, according to procedures in appendix F to this part (in mmBtu/hr, to the nearest tenth);

(H) Fuel usage time for combustion of oil during the hour (rounded up to the nearest fraction of an hour, in equal increments that can range from one hundredth to one quarter of an hour, at the option of the owner or operator) (flag to indicate multiple/single fuel types combusted); and

(I) Monitoring system identification code.

(ii) For gas-fired units or oil-fired units, using the procedures in appendix D to this part with an assumed density or for as-delivered fuel sampled from each delivery:

(A) Measured gross calorific value and, if measuring with volumetric oil flowmeters, density from each fuel sample; and

(B) Assumed gross calorific value and, if measuring with volumetric oil flowmeters, density used to calculate heat input rate.

(iii) For each hour when the unit is combusting gaseous fuel:

(A) Date and hour;

(B) Hourly heat input rate from gaseous fuel, according to procedures in appendix F to this part (in mmBtu/hr, rounded to the nearest tenth);

(C) Hourly flow rate of gaseous fuel, while the unit combusts gas (in 100 scfh) (flag value if derived from missing data procedures);

(D) Gross calorific value of gaseous fuel used to determine heat input rate (in Btu/100 scf) (flag value if derived from missing data procedures);

(E) Fuel usage time for combustion of gaseous fuel during the hour (rounded up to the nearest fraction of an hour, in equal increments that can range from one hundredth to one quarter of an hour, at the option of the owner or operator) (flag to indicate multiple/single fuel types combusted); and

(F) Monitoring system identification code.

(iv) For each oil sample or sample of diesel fuel:

(A) Date of sampling;

(B) Gross calorific value (in Btu/lb) (flag value if derived from missing data procedures); and

(C) Density or specific gravity, if required to convert volume to mass (flag value if derived from missing data procedures).

(v) For each sample of gaseous fuel:

(A) Date of sampling; and

(B) Gross calorific value (in Btu/100 scf) (flag value if derived from missing data procedures).

(vi) For each oil sample or sample of gaseous fuel:

(A) Type of oil or gas; and

(B) Percent carbon or F-factor of fuel.

(7) *Specific NO_X record provisions for gas-fired or oil-fired units using the optional low mass emissions excepted methodology in § 75.19.* In lieu of recording the information in §§ 75.57(b), (c)(2), (d), and (g), the owner or operator shall record, for each hour when the unit is operating for any portion of the hour, the following information for each affected low mass emissions unit for which the owner or operator is using the low mass emissions excepted methodology in § 75.19(c):

(i) Date and hour;

(ii) If one type of fuel is combusted in the hour, fuel type (pipeline natural gas, natural gas, residual oil, or diesel fuel) or, if more than one type of fuel is combusted in the hour, the fuel type which results in the highest emission factors for NO_X;

(iii) Average hourly NO_X emission rate (in lb/mmBtu, rounded to the nearest thousandth); and

(iv) Hourly NO_X mass emissions (in lbs, rounded to the nearest tenth).

(b) *Certification, quality assurance and quality control record provisions.* The owner or operator of any affected unit shall record the applicable information in § 75.59 for each affected unit or group of units monitored at a common stack and each non-affected unit under § 75.72(b)(2)(ii).

(c) *Monitoring plan recordkeeping provisions*—(1) *General provisions.* The owner or operator of an affected unit shall prepare and maintain a monitoring plan for each affected unit or group of units monitored at a common stack and each non-affected unit under § 75.72(b)(2)(ii). Except as provided in paragraph (d) or (f) of this section, a monitoring plan shall contain sufficient information on the continuous emission monitoring systems, excepted methodology under § 75.19, or excepted monitoring systems under appendix D or E to this part and the use of data derived from these systems to demonstrate that all the unit's NO_X emissions are monitored and reported.

(2) Whenever the owner or operator makes a replacement, modification, or change in the certified continuous emission monitoring system, excepted methodology under § 75.19, excepted monitoring system under appendix D or E to this part, or alternative monitoring system under subpart E of this part, including a change in the automated data acquisition and handling system or in the flue gas handling system, that affects information reported in the monitoring plan (e.g., a change to a serial number for a component of a monitoring system), then the owner or operator shall update the monitoring plan.

(3) *Contents of the monitoring plan for units not subject to an Acid Rain emissions limitation.* Each monitoring plan shall contain the information in § 75.53(e)(1) in electronic format and the information in § 75.53(e)(2) in hardcopy format. In addition, to the extent applicable, each monitoring plan shall contain the information in §§ 75.53(f)(1)(i), (f)(2)(i), (f)(4), and (f)(5)(i) for units using the low mass emitter methodology in electronic format and the information in §§ 75.53(f)(1)(ii), (f)(2)(ii), and (f)(5)(ii) in hardcopy format. The monitoring plan also shall identify, in electronic format, the reporting schedule for the affected unit (ozone season or quarterly), the beginning and end dates for the reporting schedule, and whether year-round reporting for the unit is required by a state or local agency.

(d) *General reporting provisions.* (1) The designated representative for an affected unit shall comply with all reporting requirements in this section and with any additional requirements set forth in an applicable State or federal NO_X mass emission reduction program that adopts the requirements of this subpart.

(2) The designated representative for an affected unit shall submit the following for each affected unit or group of units monitored at a common stack and each non-affected unit under § 75.72(b)(2)(ii):

(i) Initial certification and recertification applications in accordance with § 75.70(d);

(ii) Monitoring plans in accordance with paragraph (e) of this section; and

(iii) Quarterly reports in accordance with paragraph (f) of this section.

(3) *Other petitions and communications.* The designated representative for an affected unit shall submit petitions, correspondence, application forms, and petition-related test results in accordance with the provisions in § 75.70(h).

(4) *Quality assurance RATA reports.* If requested by the permitting authority, the designated representative of an affected unit shall submit the quality assurance RATA report for each affected unit or group of units monitored at a common stack and each non-affected unit under § 75.72(b)(2)(ii) by the later of 45 days after completing a quality assurance RATA according to section 2.3 of appendix B to this part or 15 days of receiving the request. The designated representative shall report the hardcopy information required by § 75.59(a)(9) to the permitting authority.

(5) *Notifications.* The designated representative for an affected unit shall submit written notice to the permitting authority according to the provisions in § 75.61 for each affected unit or group of units monitored at a common stack and each non-affected unit under § 75.72(b)(2)(ii).

(e) *Monitoring plan reporting.*—(1) *Electronic submission.* The designated representative for an affected unit shall submit a complete, electronic, up-to-date monitoring plan file (except for hardcopy portions identified in paragraph (e)(2) of this section) for each affected unit or group of units monitored at a common stack and each non-affected unit under § 75.72(b)(2)(ii) as follows:

(i) To the permitting authority, no later than 45 days prior to the initial certification test and at the time of recertification application submission; and

(ii) To the Administrator, no later than 45 days prior to the initial certification test, at the time of submission of a recertification application, and in each electronic quarterly report.

(2) *Hardcopy submission.* The designated representative of an affected unit shall submit all of the hardcopy information required under § 75.53, for each affected unit or group of units monitored at a common stack and each non-affected unit under § 75.72(b)(2)(ii), to the permitting authority prior to initial certification. Thereafter, the designated representative shall submit hardcopy information only if that portion of the monitoring plan is revised. The designated representative shall submit the required hardcopy information as follows: no later than 45 days prior to the initial certification test; with any recertification application, if a hardcopy monitoring plan change is associated with the recertification event; and within 30 days of any other event with which a hardcopy monitoring plan change is associated, pursuant to § 75.53(b).

(f) *Quarterly reports.*—(1) *Electronic submission.* The designated representative for an affected unit shall electronically report the data and information in this paragraph (f)(1) and in paragraphs (f)(2) and (3) of this section to the Administrator quarterly. Each electronic report must be submitted to the Administrator within 30 days following the end of each calendar quarter. Each electronic report shall include the date of report generation, for the information provided in paragraphs (f)(1)(ii) through (1)(vi) of this section, and shall also include for each affected unit or group of units monitored at a common stack:

(i) Facility information:

(A) Identification, including:

(*1*) Facility/ORISPL number;

(*2*) Calendar quarter and year data contained in the report; and

(*3*) Electronic data reporting format version used for the report.

(B) Location of facility, including:

(*1*) Plant name and facility identification code;

(*2*) EPA AIRS facility system identification code;

(*3*) State facility identification code;

(*4*) Source category/type;

(*5*) Primary SIC code;

(*6*) State postal abbreviation;

(*7*) FIPS county code; and

(*8*) Latitude and longitude.

(ii) The information and hourly data required in paragraph (a) of this section, except for:

(A) Descriptions of adjustments, corrective action, and maintenance;

(B) Information which is incompatible with electronic reporting (e.g., field data sheets, lab analyses, quality control plan);

(C) For units with NO_X add-on emission controls that do not elect to use the approved site-specific parametric monitoring procedures for calculation of substitute data, the information in § 75.58(b)(3);

(D) Information required by § 75.57(h) concerning the causes of any missing data periods and the actions taken to cure such causes;

(E) Hardcopy monitoring plan information required by § 75.53 and hardcopy test data and results required by § 75.59;

(F) Records of flow polynomial equations and numerical values required by § 75.59(a)(5)(vi);

(G) Daily fuel sampling information required by § 75.58(c)(3)(i) for units using assumed values under appendix D;

(H) Information required by § 75.59(b)(2) concerning transmitter or transducer accuracy tests;

(I) Stratification test results required as part of the RATA supplementary records under § 75.59(a)(7);

(J) Data and results of RATAs that are aborted or invalidated due to problems with the reference method or operational problems with the unit and data and results of linearity checks that are aborted or invalidated due to operational problems with the unit; and

(K) Supplementary RATA information required under § 75.59(a)(7)(i) through § 75.59(a)(7)(v), except that: the data under § 75.59(a)(7)(ii)(A) through (T) and the data under § 75.59(a)(7)(iii)(A) through (M) shall, as applicable, be reported for flow RATAs in which angular compensation (measurement of pitch and/or yaw angles) is used and for flow RATAs in which a site-specific wall effects adjustment factor is determined by direct measurement; and the data under § 75.59(a)(7)(ii)(T) shall be reported for all flow RATAs in which a default wall effects adjustment factor is applied.

(iii) Average NO_X emission rate (lb/mmBtu, rounded to the nearest thousandth) during the quarter and cumulative NO_X emission rate for the calendar year.

(iv) Tons of NO_X emitted during quarter, cumulative tons of NO_X emitted during the year, and, during the second and third calendar quarters, cumulative tons of NO_X emitted during the ozone season.

(v) During the second and third calendar quarters, cumulative heat input for the ozone season.

(vi) Unit or stack or common pipe header operating hours for quarter, cumulative unit, stack or common pipe header operating hours for calendar year, and, during the second and third calendar quarters, cumulative operating hours during the ozone season.

(2) The designated representative shall certify that the component and system identification codes and formulas in the quarterly electronic reports submitted to the Administrator pursuant to paragraph (e) of this section represent current operating conditions.

(3) *Compliance certification.* The designated representative shall submit and sign a compliance certification in

support of each quarterly emissions monitoring report based on reasonable inquiry of those persons with primary responsibility for ensuring that all of the unit's emissions are correctly and fully monitored. The certification shall state that:

(i) The monitoring data submitted were recorded in accordance with the applicable requirements of this part, including the quality assurance procedures and specifications; and

(ii) With regard to a unit with add-on emission controls and for all hours where data are substituted in accordance with § 75.34(a)(1), the add-on emission controls were operating within the range of parameters listed in the monitoring plan and the substitute values do not systematically underestimate NO_X emissions.

(4) The designated representative shall comply with all of the quarterly reporting requirements in §§ 75.64(d), (f), and (g).

53. Section 75.74 is amended by:

a. Revising paragraphs (b)(2), (c)(1) and (c)(2);

b. Redesignating paragraphs (c)(3), (c)(4), (c)(5), (c)(6), (c)(7), (c)(8), (c)(9) and (c)(10), as paragraphs (c)(4), (c)(5), (c)(6), (c)(7), (c)(8), (c)(9), (c)(10) and (c)(11), respectively;

c. Adding a new paragraph (c)(3); and

d. Revising newly redesignated paragraphs (c)(4), (c)(5), (c)(6) and (c)(7), to read as follows:

§ 75.74 Annual and ozone season monitoring and reporting requirements.

* * * * *

(b) * * *

(2) Meet the requirements of this subpart during the ozone season, except as specified in paragraph (c) of this section.

(c) * * *

(1) The owner or operator of a unit that uses continuous emissions monitoring systems or a fuel flowmeter to meet any of the requirements of this subpart shall quality assure the hourly ozone season emission data required by this subpart. To achieve this, the owner or operator shall operate, maintain and calibrate each required CEMS and shall perform diagnostic testing and quality assurance testing of each required CEMS or fuel flowmeter according to the applicable provisions of paragraphs (c)(2) through (c)(5) of this section. Except where otherwise noted, the provisions of paragraphs (c)(2) and (c)(3) of this section apply instead of the quality assurance provisions in sections 2.1 through 2.3 of appendix B to this part, and shall be used in lieu of those appendix B provisions.

(2) *Quality assurance requirements prior to the ozone season.* The provisions of this paragraph apply to each ozone season. In the time period prior to the start of the current ozone season (i.e., in the period extending from October 1 of the previous calendar year through April 30 of the current calendar year), the owner or operator shall, at a minimum, perform the following diagnostic testing and quality assurance assessments, and shall maintain the following records, to ensure that the hourly emission data recorded at the beginning of the current ozone season are suitable for reporting as quality-assured data:

(i) For each required gas monitor (i.e., for each NO_X pollutant concentration monitor and each diluent gas (CO_2 or O_2) monitor, including CO_2 and O_2 monitors used exclusively for heat input determination and O_2 monitors used for moisture determination), a linearity check shall be performed and passed.

(A) Conduct each linearity check in accordance with the general procedures in section 6.2 of appendix A to this part, except that the data validation procedures in sections 6.2(a) through (f) of appendix A do not apply.

(B) Each linearity check shall be done ''hands-off,'' as described in section 2.2.3(c) of appendix B to this part.

(C) In the time period extending from the date and hour in which the linearity check is passed through April 30 of the current calendar year, the owner or operator shall operate and maintain the CEMS and shall perform daily calibration error tests of the CEMS in accordance with section 2.1 of appendix B to this part. When a calibration error test is failed, as described in section 2.1.4 of appendix B to this part, corrective actions shall be taken. The additional calibration error test provisions of section 2.1.3 of appendix B to this part shall be followed. Records of the required daily calibration error tests shall be kept in a format suitable for inspection on a year-round basis.

(D) *Exceptions.* (*1*) If the monitor passed a linearity check on or after January 1 of the previous year and the unit or stack on which the monitor is located operated for less than 336 hours in the previous ozone season, the owner or operator may have a grace period of up to 168 hours to perform a linearity check. In addition, if the unit or stack operates for 168 hours or less in the current ozone season the owner or operator is exempt from the linearity check requirement for that ozone season and the owner or operator may submit quality assured data from that monitor as long as all other required quality assurance tests are passed. If the unit or stack operates for more than 168 hours in the current ozone season, the owner or operator of the unit shall report substitute data using the missing data procedures under paragraph (c)(7) of this section starting with the 169th unit or stack operating hour of the ozone season and continuing until the successful completion of a linearity check.

(*2*) If a monitor does not qualify for an exception under paragraph (c)(2)(i)(D)(1) and if a required linearity check has not been completed prior to the start of the current ozone season, follow the applicable procedures in paragraph (c)(3)(vi) of this section.

(ii) For each required CEMS (i.e., for each NO_X concentration monitoring system, each NO_X-diluent monitoring system, each flow rate monitoring system, each moisture monitoring system and each diluent gas CEMS used exclusively for heat input determination), a relative accuracy test audit (RATA) shall be performed and passed.

(A) Conduct each RATA in accordance with the applicable procedures in sections 6.5 through 6.5.10 of appendix A to this part, except that the data validation procedures in sections 6.5(f)(1) through (f)(6) do not apply, and, for flow rate monitoring systems, the required RATA load level(s) shall be as specified in this paragraph.

(B) Each RATA shall be done ''hands-off,'' as described in section 2.3.2 (c) of appendix B to this part. The provisions in section 2.3.1.4 of appendix B to this part, pertaining to the number of allowable RATA attempts, shall apply.

(C) For flow rate monitoring systems installed on peaking units or bypass stacks, a single-load RATA is required. For all other flow rate monitoring systems, a 2-load RATA is required at the two most frequently-used load levels (as defined under section 6.5.2.1 of appendix A to this part), with the following exceptions. A 3-load flow RATA is required at least once in every period of five consecutive calendar years. A 3-load RATA is also required if the flow monitor polynomial coefficients or K factor(s) are changed prior to conducting the flow RATA required under this paragraph.

(D) A bias test of each required NO_X concentration monitoring system, each NO_X-diluent monitoring system and each flow rate monitoring system shall be performed in accordance with section 7.6 of appendix A to this part. If the bias test is failed, a bias adjustment factor (BAF) shall be calculated for the monitoring system, as described in section 7.6.5 of appendix A to this part and shall be applied to the subsequent data recorded by the CEMS.

(E) In the time period extending from the hour of completion of the required RATA through April 30 of the current calendar year, the owner or operator shall operate and maintain the CEMS by performing, at a minimum, the following activities:

(*1*) The owner or operator shall perform daily calibration error tests and (if applicable) daily flow monitor interference checks, according to section 2.1 of appendix B to this part. When a daily calibration error test or interference check is failed, as described in section 2.1.4 of appendix B to this part, corrective actions shall be taken. The additional calibration error test provisions in section 2.1.3 of appendix B to this part shall be followed. Records of the required daily calibration error tests and interference checks shall be kept in a format suitable for inspection on a year-round basis.

(*2*) If the owner or operator makes a replacement, modification, or change in a certified monitoring system that significantly affects the ability of the system to accurately measure or record NO_X mass emissions or heat input or to meet the requirements of § 75.21 or appendix B to this part, the owner or operator shall recertify the monitoring system according to § 75.20(b).

(F) If the results of a RATA performed according to the provisions of this paragraph indicate that the CEMS qualifies for an annual RATA frequency (see Figure 2 in appendix B to this part), the RATA may be used to quality assure data for the entire current ozone season.

(G) If the results of a RATA performed according to the provisions of this paragraph indicate that the CEMS qualifies for a semiannual RATA frequency rather than an annual frequency, provided that the RATA was completed on or after January 1 of the current calendar year, the RATA may be used to quality assure data for the entire current ozone season. However, if the RATA was performed in the fourth calendar quarter of the previous year, the RATA may only be used to quality assure data for a part of the current ozone season, from May 1 through June 30. An additional RATA is then required by June 30 of the current calendar year to quality assure the remainder of the data (from June 30 through September 30) for the current ozone season. If such an additional RATA is required but is not completed by June 30 of the current calendar year, data from the CEMS shall be considered invalid as of the first unit or stack operating hour subsequent to June 30 of the current calendar year and shall remain invalid until the required RATA is performed and passed.

(H) *Exceptions.* (*1*) If the monitoring system passed a RATA on or after January 1 of the previous year and the unit or stack on which the monitor is located operated for less than 336 hours in the previous ozone season, the owner or operator may have a grace period of up to 720 hours to perform a RATA. If the unit or stack operates for 720 hours or less in the current ozone season, the owner or operator of the unit is exempt from the requirement to perform a RATA for that ozone season and the owner or operator may submit quality assured data from that monitor as long as all other required quality assurance tests are passed. If the unit or stack operates for more than 720 hours in the current ozone season, the owner or operator of the unit or stack shall report substitute data using the missing data procedures under paragraph (c)(7) of this section, starting with the 721st unit operating hour and continuing until the successful completion of the RATA.

(*2*) If a monitor does not qualify for a grace period under paragraph (c)(2)(ii)(H)(*1*) of this section and if a required RATA has not been completed prior to the start of the current ozone season, follow the applicable procedures in paragraph (c)(3)(vi) of this section.

(3) *Quality assurance requirements within the ozone season.* The provisions of this paragraph apply to each ozone season. The owner or operator shall, at a minimum, perform the following quality assurance testing during the ozone season, i.e. in the time period extending from May 1 through September 30 of each calendar year:

(i) Daily calibration error tests and (if applicable) interference checks of each CEMS required by this subpart shall be performed in accordance with sections 2.1.1 and 2.1.2 of appendix B to this part. The applicable provisions in sections 2.1.3, 2.1.4 and 2.1.5 of appendix B to this part, pertaining, respectively, to additional calibration error tests and calibration adjustments, data validation, and quality assurance of data with respect to daily assessments, shall also apply.

(ii) For each gas monitor required by this subpart, linearity checks shall be performed in the second and third calendar quarters, in accordance with section 2.2.1 of appendix B to this part (see also paragraph (c)(3)(vii) of this section). For the second calendar quarter of the year, only unit or stack operating hours in the months of May and June shall be included when determining whether the second calendar quarter is a ''QA operating quarter'' (as defined in § 72.2 of this chapter). Data validation for these linearity checks shall be done in accordance with sections 2.2.3(a) through (e) of appendix B to this part. The grace period provision in section 2.2.4 of appendix B to this part does not apply to these linearity checks. If the required linearity check has not been completed by the end of the calendar quarter, unless the conditional data validation provisions of § 75.20(b)(3) are applied, data from the CEMS are considered to be invalid, beginning with the first unit or stack operating hour after the end of the quarter and shall remain invalid until a linearity check of the CEMS is performed and passed.

(iii) For each flow monitoring system required by this subpart, flow-to-load ratio tests are required in the second and third calendar quarters, in accordance with section 2.2.5 of appendix B to this part. If the flow-to-load ratio test for the second calendar quarter is failed, the owner or operator shall declare the flow monitor out-of-control as of the first unit or stack operating hour following the second calendar quarter and shall either implement Option 1 in section 2.2.5.1 of appendix B to this part or Option 2 in section 2.2.5.2 of appendix B to this part. If the flow-to-load ratio test for the third calendar quarter is failed, data from the flow monitor shall be considered invalid at the beginning of the next ozone season unless, prior to May 1 of the next calendar year, the owner or operator has either successfully implemented Option 1 in section 2.2.5.1 of appendix B to this part or Option 2 in section 2.2.5.2 of appendix B to this part, or unless a flow RATA has been performed and passed in accordance with paragraph (c)(2)(ii) of this section.

(iv) For each differential pressure-type flow monitor used to meet the requirements of this subpart, quarterly leak checks are required in the second and third calendar quarters, in accordance with section 2.2.2 of appendix B to this part. For the second calendar quarter of the year, only unit or stack operating hours in the months of May and June shall be included when determining whether the second calendar quarter is a QA operating quarter (as defined in § 72.2 of this chapter). Data validation for quarterly flow monitor leak checks shall be done in accordance with section 2.2.3(g) of appendix B to this part. If the leak check for the third calendar quarter is failed and a subsequent leak check is not passed by the end of the ozone season, then data from the flow monitor shall be considered invalid at the beginning of the next ozone season unless a leak

check is passed prior to May 1 of the next calendar year.

(v) A fuel flow-to-load ratio test in section 2.1.7 of appendix D to this part shall be performed in the second and third calendar quarters if, for a unit using a fuel flowmeter to determine heat input under this subpart, the owner or operator has elected to use the fuel flow-to-load ratio test to extend the deadline for the next fuel flowmeter accuracy test. If a fuel flow-to-load ratio test is failed, follow the applicable procedures and data validation provisions in section 2.1.7.4 of appendix D to this part. If the fuel flow-to-load ratio test for the third calendar quarter is failed, data from the fuel flowmeter shall be considered invalid at the beginning of the next ozone season unless the requirements of section 2.1.7.4 of appendix D to this part have been fully met prior to May 1 of the next calendar year.

(vi) If, at the start of the current ozone season (i.e., as of May 1 of the current calendar year), the linearity check or RATA required under paragraph (c)(2)(i) or (c)(2)(ii) of this section has not been performed for a particular monitor or monitoring system, and if, during the previous ozone season, the unit or stack on which the monitoring system is installed operated for 336 hours or more the owner or operator shall invalidate all data from the CEMS until either:

(A) The required linearity check or RATA of the CEMS has been performed and passed; or

(B) A ''probationary calibration error test'' of the CEMS is passed in accordance with § 75.20(b)(3). Note that a calibration error test passed on April 30 may be used as the probationary calibration error test, to ensure that emission data recorded by the CEMS at the beginning of the ozone season will have a conditionally valid status. Once the probationary calibration error test has been passed, the owner or operator shall perform the required linearity check or RATA in accordance with the conditional data validation provisions and within the associated timelines in § 75.20(b)(3), with the term ''diagnostic'' applying instead of the term ''recertification''. However, in lieu of the provisions in § 75.20(b)(3)(ix), the owner or operator shall follow the applicable provisions in paragraphs (c)(3)(xi) and (c)(3)(xii) of this section.

(vii) A RATA which is performed and passed during the second or third quarter of the current calendar year may be used to quality assure data in the next ozone season, provided that:

(A) The results of the RATA indicate that the CEMS qualifies for an annual RATA frequency (see Figure 2 in appendix B to this part); and

(B) The CEMS is continuously operated and maintained, and daily calibration error tests and (if applicable) interference checks of the CEMS are performed in the time period extending from the end of the current ozone season (October 1 of the current calendar year) through April 30 of the next calendar year; and

(C) For a gas monitoring system, the linearity check requirement of paragraph (c)(2)(i) of this section is met prior to May 1 of the next calendar year.

(D) If conditions in paragraphs (c)(3)(vii)(A), (B) and, if applicable, (c)(3)(vii)(C) of this section are met, then a RATA completed and passed in the second or third calendar quarter of the current year may be used to quality assure data for the next ozone season, as follows:

(*1*) If the RATA is completed and passed in the second calendar quarter of the current year, the RATA may be used to quality assure data from the CEMS through June 30 of the next calendar year.

(*2*) If the RATA is completed and passed in the third calendar quarter of the current year, the RATA may be used to quality assure data from the CEMS through September 30 of the next calendar year.

(viii) If a linearity check performed to meet the requirement of paragraph (c)(2)(i) of this section is completed and passed in the second calendar quarter of the current year, provided that the date and hour of completion of the test is within the first 168 unit or stack operating hours of the current ozone season, the linearity check may be used to satisfy both the requirement of paragraph (c)(2)(i) of this section and to meet the second quarter linearity check requirement of paragraph (c)(3)(ii) of this section.

(ix) If, for any required CEMS, diagnostic linearity checks or RATAs other than those required by this section are performed during the ozone season, use the applicable data validation procedures in section 2.2.3 (for linearity checks) or 2.3.2 (for RATAs) of appendix B to this part.

(x) If any required CEMS is recertified within the ozone season, use the data validation provisions in § 75.20(b)(3) and paragraphs (c)(3)(xi) and (c)(3)(xii) of this section.

(xi) If, at the end of the second quarter of any calendar year, a required quality assurance, diagnostic or recertification test of a monitoring system has not been completed, and if data contained in the quarterly report are conditionally valid pending the results of test(s) to be completed in a subsequent quarter, the owner or operator shall indicate this by means of a suitable conditionally valid data flag in the electronic quarterly report for the second calendar quarter. The owner or operator shall resubmit the report for the second quarter if the required quality assurance, diagnostic or recertification test is subsequently failed. In the resubmitted report, the owner or operator shall use the appropriate missing data routine in § 75.31 or § 75.33 to replace with substitute data each hour of conditionally valid data that was invalidated by the failed quality assurance, diagnostic or recertification test. Alternatively, if any required quality assurance, diagnostic or recertification test is not completed by the end of the second calendar quarter but is completed no later than 30 days after the end of that quarter (i.e., prior to the deadline for submitting the quarterly report under § 75.73), the test data and results may be submitted with the second quarter report even though the test date(s) are from the third calendar quarter. In such instances, if the quality assurance, diagnostic or recertification test(s) are passed in accordance with the provisions of § 75.20(b)(3), conditionally valid data may be reported as quality-assured, in lieu of reporting a conditional data flag. If the tests are failed and if conditionally valid data are replaced, as appropriate, with substitute data, then neither the reporting of a conditional data flag nor resubmission is required.

(xii) If, at the end of the third quarter of any calendar year, a required quality assurance, diagnostic or recertification test of a monitoring system has not been completed, and if data contained in the quarterly report are conditionally valid pending the results of test(s) to be completed, the owner or operator shall do one of the following:

(A) If the results of the required tests are not available within 30 days of the end of the third calendar quarter and cannot be submitted with the quarterly report for the third calendar quarter, then the test results are considered to be missing and the owner or operator shall use the appropriate missing data routine in § 75.31 or § 75.33 to replace with substitute data each hour of conditionally valid data in the third quarter report. In addition, if the data in the second quarterly report were flagged as conditionally valid at the end of the quarter, pending the results of the same missing tests, the owner or operator shall resubmit the report for the second quarter and shall use the appropriate missing data routine in § 75.31 or § 75.33 to replace with substitute data

each hour of conditionally valid data associated with the missing quality assurance, diagnostic or recertification tests; or

(B) If the required quality assurance, diagnostic or recertification tests are completed no later than 30 days after the end of the third calendar quarter, the test data and results may be submitted with the third quarter report even though the test date(s) are from the fourth calendar quarter. In this instance, if the required tests are passed in accordance with the provisions of § 75.20(b)(3), all conditionally valid data associated with the tests shall be reported as quality assured. If the tests are failed, the owner or operator shall use the appropriate missing data routine in § 75.31 or § 75.33 to replace with substitute data each hour of conditionally valid data associated with the failed test(s). In addition, if the data in the second quarterly report were flagged as conditionally valid at the end of the quarter, pending the results of the same failed test(s), the owner or operator shall resubmit the report for the second quarter and shall use the appropriate missing data routine in § 75.31 or § 75.33 to replace with substitute data each hour of conditionally valid data associated with the failed test(s).

(4) The owner or operator of a unit using the procedures in appendix D of this part to determine heat input is required to maintain fuel flowmeters only during the ozone season, except that for purposes of determining the deadline for the next periodic quality assurance test on the fuel flowmeter, the owner or operator shall include all fuel flowmeter QA operating quarters (as defined in § 72.2) for the entire calendar year, not just fuel flowmeter QA operating quarters in the ozone season. For each calendar year, the owner or operator shall record, for each fuel flowmeter, the number of fuel flowmeter QA operating quarters.

(5) The owner or operator of a unit using the procedures in appendix D of this part to determine heat input is only required to sample fuel for the purposes of determining density and GCV during the ozone season, except that:

(i) The owner or operator of a unit that performs sampling from the fuel storage tank upon delivery must sample the tank between the date and hour of the most recent delivery before the first date and hour that the unit operates in the ozone season and the first date and hour that the unit operates in the ozone season.

(ii) The owner or operator of a unit that performs sampling upon delivery from the delivery vehicle must ensure that all shipments received during the calendar year are sampled.

(iii) The owner or operator of a unit that performs sampling on each day the unit combusts fuel or that performs fuel sampling continuously must sample the fuel starting on the first day the unit operates during the ozone season. The owner or operator then shall use that sampled value for all hours of combustion during the first day of unit operation, continuing until the date and hour of the next sample.

(6) The owner or operator shall, in accordance with § 75.73, record and report the hourly data required by this subpart and shall record and report the results of all required quality assurance tests, as follows:

(i) All hourly emission data for the period of time from May 1 through September 30 of each calendar year shall be recorded and reported. For missing data purposes, only the data recorded in the time period from May 1 through September 30 shall be considered quality-assured;

(ii) The results of all daily calibration error tests and flow monitor interference checks performed in the time period from May 1 through September 30 shall be recorded and reported;

(iii) For the time periods described in paragraphs (c)(2)(i)(C) and (c)(2)(ii)(E) of this section, hourly emission data and the results of all daily calibration error tests and flow monitor interference checks shall be recorded. The results of all daily calibration error tests and flow monitor interference checks performed in the time period from April 1 through April 30 shall be reported. The owner or operator may also report the hourly emission data and unit operating data recorded in the time period from April 1 through April 30. However, only the emission data recorded in the time period from May 1 through September 30 shall be used for NO_X mass compliance determination;

(iv) The results of all required quality assurance tests (RATAs, linearity checks, flow-to-load ratio tests and leak checks) performed during the ozone season shall be reported in the appropriate ozone season quarterly report; and

(v) The results of RATAs (and any other quality assurance test(s) required under paragraph (c)(2) or (c)(3) of this section) which affect data validation for the current ozone season, but which were performed outside the ozone season (i.e., between October 1 of the previous calendar year and April 30 of the current calendar year), shall be reported in the quarterly report for the second quarter of the current calendar year.

(7) The owner or operator shall use only quality-assured data from within ozone seasons in the substitute data procedures under subpart D of this part and section 2.4.2 of appendix D to this part.

(i) The lookback periods (e.g., 2160 quality-assured monitor operating hours for a NO_X-diluent continuous emission monitoring system, a NO_X concentration monitoring system, or a flow monitoring system) used to calculate missing data must include only quality-assured data from periods within ozone seasons.

(ii) The missing data procedures of §§ 75.31 through 75.33 shall be used, with two exceptions. First, when the NO_X emission rate or NO_X concentration of the unit was consistently lower in the previous ozone season because the unit combusted a fuel that produces less NO_X than the fuel currently being combusted; and second, when the unit's add-on emission controls are not working properly, as shown by the parametric data recorded under paragraph (c)(8) of this section. In those two cases, the owner or operator shall substitute the maximum potential NO_X emission rate, as defined in § 72.2 of this chapter, from a NO_X-diluent continuous emission monitoring system, or the maximum potential concentration of NO_X, as defined in section 2.1.2.1 of appendix A to this part, from a NO_X concentration monitoring system. The maximum potential value used shall be for the fuel currently being combusted. The length of time for which the owner or operator shall substitute these maximum potential values for each hour of missing NO_X operator shall substitute these maximum potential value for each hour of missing NO_X data, shall be as follows:

(A) For a unit that changed fuels, substitute the maximum potential values until the first hour when the unit combusts a fuel that produces the same or less NO_X than the fuel combusted in the previous ozone season; and

(B) For a unit with add-on emission controls that are not working properly, substitute the maximum potential values until the first hour in which the add-on emission controls are documented to be operating properly, according to paragraph (c)(8) of this section.

* * * * *

54. Appendix A to part 75 is amended by—

a. Revising sections 2 through 2.1.1.4;

b. Adding section 2.1.1.5;

c. Revising sections 2.1.2 through 2.1.2.4;

d. Adding section 2.1.2.5;

e. Revising section 2.1.3;
f. Adding sections 2.1.3.1 through 2.1.3.3;
g. Revising section 2.1.4;
h. Adding sections 2.1.4.1 through 2.1.6;
i. Removing and reserving section 2.2 and removing sections 2.2.1 through 2.2.2.2 to read as follows:

Appendix A to Part 75—Specifications and Test Procedures

* * * * *

2. Equipment Specifications

2.1 Instrument Span and Range

In implementing sections 2.1.1 through 2.1.6 of this appendix, set the measurement range for each parameter (SO_2, NO_X, CO_2, O_2, or flow rate) high enough to prevent full-scale exceedances from occurring, yet low enough to ensure good measurement accuracy and to maintain a high signal-to-noise ratio. To meet these objectives, select the range such that the readings obtained during typical unit operation are kept, to the extent practicable, between 20.0 and 80.0 percent of full-scale range of the instrument. These guidelines do not apply to: (1) SO_2 readings obtained during the combustion of very low sulfur fuel (as defined in § 72.2 of this chapter); (2) SO_2 or NO_X readings recorded on the high measurement range, for units with SO_2 or NO_X emission controls and two span values; or (3) SO_2 or NO_X readings less than 20.0 percent of full-scale on the low measurement range for a dual span unit with SO_2 or NO_X emission controls, provided that the readings occur during periods of high control device efficiency.

2.1.1 SO_2 Pollutant Concentration Monitors

Determine, as indicated in this section 2, the span value(s) and range(s) for an SO_2 pollutant concentration monitor so that all potential and expected concentrations can be accurately measured and recorded. Note that if a unit exclusively combusts fuels that are very low sulfur fuels (as defined in § 72.2 of this chapter), the SO_2 monitor span requirements in § 75.11(e)(3)(iv) apply in lieu of the requirements of this section.

2.1.1.1 Maximum Potential Concentration

(a) Make an initial determination of the maximum potential concentration (MPC) of SO_2 by using Equation A–1a or A–1b. Base the MPC calculation on the maximum percent sulfur and the minimum gross calorific value (GCV) for the highest-sulfur fuel to be burned. The maximum sulfur content and minimum GCV shall be determined from all available fuel sampling and analysis data for that fuel from the previous 12 months (minimum), excluding clearly anomalous fuel sampling values. If the designated representative certifies that the highest-sulfur fuel is never burned alone in the unit during normal operation but is always blended or co-fired with other fuel(s), the MPC may be calculated using a best estimate of the highest sulfur content and lowest gross calorific value expected for the blend or fuel mixture and inserting these values into Equation A–1a or A–1b. Derive the best estimate of the highest percent sulfur and lowest GCV for a blend or fuel mixture from weighted-average values based upon the historical composition of the blend or mixture in the previous 12 (or more) months. If insufficient representative fuel sampling data are available to determine the maximum sulfur content and minimum GCV, use values from contract(s) for the fuel(s) that will be combusted by the unit in the MPC calculation.

(b) Alternatively, if a certified SO_2 CEMS is already installed, the owner or operator may make the initial MPC determination based upon quality assured historical data recorded by the CEMS. If this option is chosen, the MPC shall be the maximum SO_2 concentration observed during the previous 720 (or more) quality assured monitor operating hours when combusting the highest-sulfur fuel (or highest-sulfur blend if fuels are always blended or co-fired) that is to be combusted in the unit or units monitored by the SO_2 monitor. For units with SO_2 emission controls, the certified SO_2 monitor used to determine the MPC must be located at or before the control device inlet. Report the MPC and the method of determination in the monitoring plan required under § 75.53.

(c) When performing fuel sampling to determine the MPC, use ASTM Methods: ASTM D3177–89, ''Standard Test Methods for Total Sulfur in the Analysis Sample of Coal and Coke''; ASTM D4239–85, ''Standard Test Methods for Sulfur in the Analysis Sample of Coal and Coke Using High Temperature Tube Furnace Combustion Methods''; ASTM D4294–90, ''Standard Test Method for Sulfur in Petroleum Products by Energy-Dispersive X-Ray Fluorescence Spectroscopy''; ASTM D1552–90, ''Standard Test Method for Sulfur in Petroleum Products (High Temperature Method)''; ASTM D129–91, ''Standard Test Method for Sulfur in Petroleum Products (General Bomb Method)''; ASTM D2622–92, ''Standard Test Method for Sulfur in Petroleum Products by X-Ray Spectrometry'' for sulfur content of solid or liquid fuels; ASTM D3176–89, ''Standard Practice for Ultimate Analysis of Coal and Coke''; ASTM D240–87 (Reapproved 1991), ''Standard Test Method for Heat of Combustion of Liquid Hydrocarbon Fuels by Bomb Calorimeter''; or ASTM D2015–91, ''Standard Test Method for Gross Calorific Value of Coal and Coke by the Adiabatic Bomb Calorimeter'' for GCV (incorporated by reference under § 75.6).

$$\text{MPC (or MEC)} = 11.32 \times 10^6 \left(\frac{\%S}{GCV}\right)\left(\frac{20.9 - \%O_{2w}}{20.9}\right) \qquad \text{(Eq. A-1a)}$$

or

$$\text{MPC (or MEC)} = 66.93 \times 10^6 \left(\frac{\%S}{GCV}\right)\left(\frac{\%CO_{2w}}{100}\right) \qquad \text{(Eq. A-1b)}$$

Where,

MPC = Maximum potential concentration (ppm, wet basis). (To convert to dry basis, divide the MPC by 0.9.)

MEC = Maximum expected concentration (ppm, wet basis). (To convert to dry basis, divide the MEC by 0.9).

%S = Maximum sulfur content of fuel to be fired, wet basis, weight percent, as determined by ASTM D3177–89, ASTM D4239–85, ASTM D4294–90, ASTM D1552–90, ASTM D129–91, or ASTM D2622–92 for solid or liquid fuels (incorporated by reference under § 75.6).

$\%O_{2w}$ = Minimum oxygen concentration, percent wet basis, under typical operating conditions.

$\%CO_{2w}$ = Maximum carbon dioxide concentration, percent wet basis, under typical operating conditions.

11.32×10^6 = Oxygen-based conversion factor in Btu/lb (ppm)/%.

66.93×10^6 = Carbon dioxide-based conversion factor in Btu/lb (ppm)/%.

Note: All percent values to be inserted in the equations of this section are to be expressed as a percentage, not a fractional value (e.g., 3, not .03).

2.1.1.2 Maximum Expected Concentration

(a) Make an initial determination of the maximum expected concentration (MEC) of SO_2 whenever: (a) SO_2 emission controls are used; or (b) both high-sulfur and low-sulfur fuels (e.g., high-sulfur coal and low-sulfur coal or different grades of fuel oil) or high-sulfur and low-sulfur fuel blends are combusted as primary or backup fuels in a unit without SO_2 emission controls. For units with SO_2 emission controls, use Equation A–2 to make the initial MEC determination. When high-sulfur and low-sulfur fuels or blends are burned as primary or backup fuels in a unit without SO_2 controls, use Equation A–1a or A–1b to calculate the initial MEC value for each fuel or blend, except for: (1) the highest-sulfur fuel or blend (for which the MPC was previously calculated in section 2.1.1.1 of this appendix); (2) fuels or blends that are very low sulfur fuels (as defined in § 72.2 of this chapter); or (3) fuels or blends that are used only for unit startup.

(b) For each MEC determination, substitute into Equation A–1a or A–1b the highest sulfur content and minimum GCV value for

that fuel or blend, based upon all available fuel sampling and analysis results from the previous 12 months (or more), or, if fuel sampling data are unavailable, based upon fuel contract(s).

(c) Alternatively, if a certified SO_2 CEMS is already installed, the owner or operator may make the initial MEC determination(s) based upon historical monitoring data. If this option is chosen for a unit with SO_2 emission controls, the MEC shall be the maximum SO_2 concentration measured downstream of the control device outlet by the CEMS over the previous 720 (or more) quality assured monitor operating hours with the unit and the control device both operating normally. For units that burn high- and low-sulfur fuels or blends as primary and backup fuels and have no SO_2 emission controls, the MEC for each fuel shall be the maximum SO_2 concentration measured by the CEMS over the previous 720 (or more) quality assured monitor operating hours in which that fuel or blend was the only fuel being burned in the unit.

$$MEC = MPC\left(\frac{100 - RE}{100}\right) \qquad \text{(Eq. A-2)}$$

Where:

MEC = Maximum expected concentration (ppm).

MPC = Maximum potential concentration (ppm), as determined by Eq. A–1a or A–1b.

RE = Expected average design removal efficiency of control equipment (%).

2.1.1.3 Span Value(s) and Range(s)

Determine the high span value and the high full-scale range of the SO_2 monitor as follows. (Note: For purposes of this part, the high span and range refer, respectively, either to the span and range of a single span unit or to the high span and range of a dual span unit.) The high span value shall be obtained by multiplying the MPC by a factor no less than 1.00 and no greater than 1.25. Round the span value upward to the next highest multiple of 100 ppm. If the SO_2 span concentration is ≤500 ppm, the span value may be rounded upward to the next highest multiple of 10 ppm, instead of the nearest 100 ppm. The high span value shall be used to determine concentrations of the calibration gases required for daily calibration error checks and linearity tests. Select the full-scale range of the instrument to be consistent with section 2.1 of this appendix and to be greater than or equal to the span value. Report the full-scale range setting and calculations of the MPC and span in the monitoring plan for the unit. Note that for certain applications, a second (low) SO_2 span and range may be required (see section 2.1.1.4 of this appendix). If an existing state, local, or federal requirement for span of an SO_2 pollutant concentration monitor requires a span lower than that required by this section or by section 2.1.1.4 of this appendix, the state, local, or federal span value may be used if a satisfactory explanation is included in the monitoring plan, unless span and/or range adjustments become necessary in accordance with section 2.1.1.5 of this appendix. Span values higher than those required by either this section or section 2.1.1.4 of this appendix must be approved by the Administrator.

2.1.1.4 Dual Span and Range Requirements

For most units, the high span value based on the MPC, as determined under section 2.1.1.3 of this appendix will suffice to measure and record SO_2 concentrations (unless span and/or range adjustments become necessary in accordance with section 2.1.1.5 of this appendix). In some instances, however, a second (low) span value based on the MEC may be required to ensure accurate measurement of all possible or expected SO_2 concentrations. To determine whether two SO_2 span values are required, proceed as follows:

(a) For units with SO_2 emission controls, compare the MEC from section 2.1.1.2 of this appendix to the high full-scale range value from section 2.1.1.3 of this appendix. If the MEC is ≥20.0 percent of the high range value, then the high span value and range determined under section 2.1.1.3 of this appendix are sufficient. If the MEC is <20.0 percent of the high range value, then a second (low) span value is required.

(b) For units that combust high- and low-sulfur primary and backup fuels (or blends) and have no SO_2 controls, compare the high range value from section 2.1.1.3 of this appendix (for the highest-sulfur fuel or blend) to the MEC value for each of the other fuels or blends, as determined under section 2.1.1.2 of this appendix. If all of the MEC values are ≥20.0 percent of the high range value, the high span and range determined under section 2.1.1.3 of this appendix are sufficient, regardless of which fuel or blend is burned in the unit. If any MEC value is <20.0 percent of the high range value, then a second (low) span value must be used when that fuel or blend is combusted.

(c) When two SO_2 spans are required, the owner or operator may either use a single SO_2 analyzer with a dual range (i.e., low- and high-scales) or two separate SO_2 analyzers connected to a common sample probe and sample interface. For units with SO_2 emission controls, the owner or operator may use a low range analyzer and a default high range value, as described in paragraph (f) of this section, in lieu of maintaining and quality assuring a high-scale range. Other monitor configurations are subject to the approval of the Administrator.

(d) The owner or operator shall designate the monitoring systems and components in the monitoring plan under § 75.53 as follows: designate the low and high monitor ranges as separate SO_2 components of a single, primary SO_2 monitoring system; or designate the low and high monitor ranges as the SO_2 components of two separate, primary SO_2 monitoring systems; or designate the normal monitor range as a primary monitoring system and the other monitor range as a non-redundant backup monitoring system; or, when a single, dual-range SO_2 analyzer is used, designate the low and high ranges as a single SO_2 component of a primary SO_2 monitoring system (if this option is selected, use a special dual-range component type code, as specified by the Administrator, to satisfy the requirements of § 75.53(e)(1)(iv)(D)); or, for units with SO_2 controls, if the default high range value is used, designate the low range analyzer as the SO_2 component of a primary SO_2 monitoring system. Do not designate the default high range as a monitoring system or component. Other component and system designations are subject to approval by the Administrator. Note that the component and system designations for redundant backup monitoring systems shall be the same as for primary monitoring systems.

(e) Each monitoring system designated as primary or redundant backup shall meet the initial certification and quality assurance requirements for primary monitoring systems in § 75.20(c) or § 75.20(d)(1), as applicable, and appendices A and B to this part, with one exception: relative accuracy test audits (RATAs) are required only on the normal range (for units with SO_2 emission controls, the low range is considered normal). Each monitoring system designated as a non-redundant backup shall meet the applicable quality assurance requirements in § 75.20(d)(2).

(f) For dual span units with SO_2 emission controls, the owner or operator may, as an alternative to maintaining and quality assuring a high monitor range, use a default high range value. If this option is chosen, the owner or operator shall report a default SO_2 concentration of 200 percent of the MPC for each unit operating hour in which the full-scale of the low range SO_2 analyzer is exceeded.

(g) The high span value and range shall be determined in accordance with section 2.1.1.3 of this appendix. The low span value shall be obtained by multiplying the MEC by a factor no less than 1.00 and no greater than 1.25, and rounding the result upward to the next highest multiple of 10 ppm (or 100 ppm, as appropriate). For units that burn high- and low-sulfur primary and backup fuels or blends and have no SO_2 emission controls, select, as the basis for calculating the appropriate low span value and range, the fuel-specific MEC value closest to 20.0 percent of the high full-scale range value (from paragraph (b) of this section). The low range must be greater than or equal to the low span value, and the required calibration gases must be selected based on the low span value. For units with two SO_2 spans, use the low range whenever the SO_2 concentrations are expected to be consistently below 20.0 percent of the high full-scale range value, i.e., when the MEC of the fuel or blend being combusted is less than 20.0 percent of the high full-scale range value. When the full-scale of the low range is exceeded, the high range shall be used to measure and record the SO_2 concentrations; or, if applicable, the default high range value in paragraph (f) of this section shall be reported for each hour of the full-scale exceedance.

2.1.1.5 Adjustment of Span and Range

For each affected unit or common stack, the owner or operator shall make a periodic evaluation of the MPC, MEC, span, and range values for each SO_2 monitor (at a minimum, an annual evaluation is required) and shall make any necessary span and range adjustments, with corresponding monitoring plan updates, as described in paragraphs (a) and (b) of this section. Span and range

adjustments may be required, for example, as a result of changes in the fuel supply, changes in the manner of operation of the unit, or installation or removal of emission controls. In implementing the provisions in paragraphs (a) and (b) of this section, SO_2 data recorded during short-term, non-representative process operating conditions (e.g., a trial burn of a different type of fuel) shall be excluded from consideration. The owner or operator shall keep the results of the most recent span and range evaluation on-site, in a format suitable for inspection. Make each required span or range adjustment no later than 45 days after the end of the quarter in which the need to adjust the span or range is identified, except that up to 90 days after the end of that quarter may be taken to implement a span adjustment if the calibration gases currently being used for daily calibration error tests and linearity checks are unsuitable for use with the new span value.

(a) If the fuel supply, the composition of the fuel blend(s), the emission controls, or the manner of operation change such that the maximum expected or potential concentration changes significantly, adjust the span and range setting to assure the continued accuracy of the monitoring system. A ''significant'' change in the MPC or MEC means that the guidelines in section 2.1 of this appendix can no longer be met, as determined by either a periodic evaluation by the owner or operator or from the results of an audit by the Administrator. The owner or operator should evaluate whether any planned changes in operation of the unit may affect the concentration of emissions being emitted from the unit or stack and should plan any necessary span and range changes needed to account for these changes, so that they are made in as timely a manner as practicable to coordinate with the operational changes. Determine the adjusted span(s) using the procedures in sections 2.1.1.3 and 2.1.1.4 of this appendix (as applicable). Select the full-scale range(s) of the instrument to be greater than or equal to the new span value(s) and to be consistent with the guidelines of section 2.1 of this appendix.

(b) Whenever a full-scale range is exceeded during a quarter and the exceedance is not caused by a monitor out-of-control period, proceed as follows:

(1) For exceedances of the high range, report 200.0 percent of the current full-scale range as the hourly SO_2 concentration for each hour of the full-scale exceedance and make appropriate adjustments to the MPC, span, and range to prevent future full-scale exceedances.

(2) For units with two SO_2 spans and ranges, if the low range is exceeded, no further action is required, provided that the high range is available and is not out-of-control or out-of-service for any reason. However, if the high range is not able to provide quality assured data at the time of the low range exceedance or at any time during the continuation of the exceedance, report the MPC as the SO_2 concentration until the readings return to the low range or until the high range is able to provide quality assured data (unless the reason that the high-scale range is not able to provide quality assured data is because the high-scale range has been exceeded; if the high-scale range is exceeded follow the procedures in paragraph (b)(1) of this section).

(c) Whenever changes are made to the MPC, MEC, full-scale range, or span value of the SO_2 monitor, as described in paragraphs (a) or (b) of this section, record and report (as applicable) the new full-scale range setting, the new MPC or MEC and calculations of the adjusted span value in an updated monitoring plan. The monitoring plan update shall be made in the quarter in which the changes become effective. In addition, record and report the adjusted span as part of the records for the daily calibration error test and linearity check specified by appendix B to this part. Whenever the span value is adjusted, use calibration gas concentrations that meet the requirements of section 5.1 of this appendix, based on the adjusted span value. When a span adjustment is so significant that the calibration gases currently being used for daily calibration error tests and linearity checks are unsuitable for use with the new span value, then a diagnostic linearity test using the new calibration gases must be performed and passed. Data from the monitor are considered invalid from the hour in which the span is adjusted until the required linearity check is passed in accordance with section 6.2 of this appendix.

2.1.2 NO_X Pollutant Concentration Monitors

Determine, as indicated in section 2.1.2.1, the span and range value(s) for the NO_X pollutant concentration monitor so that all expected NO_X concentrations can be determined and recorded accurately.

2.1.2.1 Maximum Potential Concentration

(a) The maximum potential concentration (MPC) of NO_X for each affected unit shall be based upon whichever fuel or blend combusted in the unit produces the highest level of NO_X emissions. Make an initial determination of the MPC using the appropriate option as follows:

Option 1: Use 800 ppm for coal-fired and 400 ppm for oil- or gas-fired units as the maximum potential concentration of NO_X (if an MPC of 1600 ppm for coal-fired units or 480 ppm for oil- or gas-fired units was previously selected under this part, that value may still be used, provided that the guidelines of section 2.1 of this appendix are met);

Option 2: Use the specific values based on boiler type and fuel combusted, listed in Table 2–1 or Table 2–2;

Option 3: Use NO_X emission test results; or

Option 4: Use historical CEM data over the previous 720 (or more) unit operating hours when combusting the fuel or blend with the highest NO_X emission rate.

(b) For the purpose of providing substitute data during NO_X missing data periods in accordance with §§ 75.31 and 75.33 and as required elsewhere under this part, the owner or operator shall also calculate the maximum potential NO_X emission rate (MER), in lb/mmBtu, by substituting the MPC for NO_X in conjunction with the minimum expected CO_2 or maximum O_2 concentration (under all unit operating conditions except for unit startup, shutdown, and upsets) and the appropriate F-factor into the applicable equation in appendix F to this part. The diluent cap value of 5.0 percent CO_2 (or 14.0 percent O_2) for boilers or 1.0 percent CO_2 (or 19.0 percent O_2) for combustion turbines may be used in the NO_X MER calculation.

(c) Report the method of determining the initial MPC and the calculation of the maximum potential NO_X emission rate in the monitoring plan for the unit.

(d) For units with add-on NO_X controls (whether or not the unit is equipped with low-NO_X burner technology), NO_X emission testing may only be used to determine the MPC if testing can be performed either upstream of the add-on controls or during a time or season when the add-on controls are not in operation. If NO_X emission testing is performed, use the following guidelines. Use Method 7E from appendix A to part 60 of this chapter to measure total NO_X concentration. (Note: Method 20 from appendix A to part 60 may be used for gas turbines, instead of Method 7E.) Operate the unit, or group of units sharing a common stack, at the minimum safe and stable load, the normal load, and the maximum load. If the normal load and maximum load are identical, an intermediate level need not be tested. Operate at the highest excess O_2 level expected under normal operating conditions. Make at least three runs of 20 minutes (minimum) duration with three traverse points per run at each operating condition. Select the highest point NO_X concentration from all test runs as the MPC for NO_X.

(e) If historical CEM data are used to determine the MPC, the data must, for uncontrolled units or units equipped with low-NO_X burner technology and no other NO_X controls, represent a minimum of 720 quality assured monitor operating hours, obtained under various operating conditions including the minimum safe and stable load, normal load (including periods of high excess air at normal load), and maximum load. For a unit with add-on NO_X controls (whether or not the unit is equipped with low-NO_X burner technology), historical CEM data may only be used to determine the MPC if the 720 quality assured monitor operating hours of CEM data are collected upstream of the add-on controls or if the 720 hours of data include periods when the add-on controls are not in operation. The highest hourly NO_X concentration in ppm shall be the MPC.

TABLE 2–1.—MAXIMUM POTENTIAL CONCENTRATION FOR NO_X—COAL-FIRED UNITS

Unit type	Maximum potential concentration for NO_X (ppm)
Tangentially-fired dry bottom and fluidized bed	460
Wall-fired dry bottom, turbo-fired dry bottom, stokers	675
Roof-fired (vertically-fired) dry bottom, cell burners, arch-fired	975
Cyclone, wall-fired wet bottom, wet bottom turbo-fired	1200
Others	(1)

[1] As approved by the Administrator.

TABLE 2–2.—MAXIMUM POTENTIAL CONCENTRATION FOR NO_X—GAS-AND OIL-FIRED UNITS

Unit type	Maximum potential concentration for NO_X (ppm)
Tangentially-fired dry bottom	380
Wall-fired dry bottom	600
Roof-fired (vertically-fired) dry bottom, arch-fired	550
Existing combustion turbine or combined cycle turbine	200
New stationary gas turbine/combustion turbine	50
Others	(1)

[1] As approved by the Administrator

2.1.2.2 Maximum Expected Concentration

(a) Make an initial determination of the maximum expected concentration (MEC) of NO_X during normal operation for affected units with add-on NO_X controls of any kind (e.g., steam injection, water injection, SCR, or SNCR). Determine a separate MEC value for each type of fuel (or blend) combusted in the unit, except for fuels that are only used for unit startup and/or flame stabilization. Calculate the MEC of NO_X using Equation A–2, if applicable, inserting the maximum potential concentration, as determined using the procedures in section 2.1.2.1 of this appendix. Where Equation A–2 is not applicable, set the MEC either by: (1) measuring the NO_X concentration using the testing procedures in this section; or (2) using historical CEM data over the previous 720 (or more) quality assured monitor operating hours. Include in the monitoring plan for the unit each MEC value and the method by which the MEC was determined.

(b) If NO_X emission testing is used to determine the MEC value(s), the MEC for each type of fuel (or blend) shall be based upon testing at minimum load, normal load, and maximum load. At least three tests of 20 minutes (minimum) duration, using at least three traverse points, shall be performed at each load, using Method 7E from appendix A to part 60 of this chapter (Note: Method 20 from appendix A to part 60 may be used for gas turbines instead of Method 7E). The test must be performed at a time when all NO_X control devices and methods used to reduce NO_X emissions are operating properly. The testing shall be conducted downstream of all NO_X controls. The highest point NO_X concentration (e.g., the highest one-minute average) recorded during any of the test runs shall be the MEC.

(c)If historical CEM data are used to determine the MEC value(s), the MEC for each type of fuel shall be based upon 720 (or more) hours of quality assured data representing the entire load range under stable operating conditions. The data base for the MEC shall not include any CEM data recorded during unit startup, shutdown, or malfunction or during any NO_X control device malfunctions or outages. All NO_X control devices and methods used to reduce NO_X emissions must be operating properly during each hour. The CEM data shall be collected downstream of all NO_X controls. For each type of fuel, the highest of the 720 (or more) quality assured hourly average NO_X concentrations recorded by the CEMS shall be the MEC.

2.1.2.3 Span Value(s) and Range(s)

(a) Determine the high span value of the NO_X monitor as follows. The high span value shall be obtained by multiplying the MPC by a factor no less than 1.00 and no greater than 1.25. Round the span value upward to the next highest multiple of 100 ppm. If the NO_X span concentration is ≤ 500 ppm, the span value may be rounded upward to the next highest multiple of 10 ppm, rather than 100 ppm. The high span value shall be used to determine the concentrations of the calibration gases required for daily calibration error checks and linearity tests. Note that for certain applications, a second (low) NO_X span and range may be required (see section 2.1.2.4 of this appendix).

(b) If an existing State, local, or federal requirement for span of a NO_X pollutant concentration monitor requires a span lower than that required by this section or by section 2.1.2.4 of this appendix, the State, local, or federal span value may be used, where a satisfactory explanation is included in the monitoring plan, unless span and/or range adjustments become necessary in accordance with section 2.1.2.5 of this appendix. Span values higher than required by this section or by section 2.1.2.4 of this appendix must be approved by the Administrator.

(c) Select the full-scale range of the instrument to be consistent with section 2.1 of this appendix and to be greater than or equal to the high span value. Include the full-scale range setting and calculations of the MPC and span in the monitoring plan for the unit.

2.1.2.4 Dual Span and Range Requirements

For most units, the high span value based on the MPC, as determined under section 2.1.2.3 of this appendix will suffice to measure and record NO_X concentrations (unless span and/or range adjustments must be made in accordance with section 2.1.2.5 of this appendix). In some instances, however, a second (low) span value based on the MEC may be required to ensure accurate measurement of all expected and potential NO_X concentrations. To determine whether two NO_X spans are required, proceed as follows:

(a) Compare the MEC value(s) determined in section 2.1.2.2 of this appendix to the high full-scale range value determined in section 2.1.2.3 of this appendix. If the MEC values for all fuels (or blends) are ≥20.0 percent of the high range value, the high span and range values determined under section 2.1.2.3 of this appendix are sufficient, irrespective of which fuel or blend is combusted in the unit. If any of the MEC values is <20.0 percent of the high range value, two spans (low and high) are required, one based on the MPC and the other based on the MEC.

(b) When two NO_X spans are required, the owner or operator may either use a single NO_X analyzer with a dual range (low-and high-scales) or two separate NO_X analyzers connected to a common sample probe and sample interface. For units with add-on NO_X emission controls (i.e., steam injection, water injection, SCR, or SNCR), the owner or operator may use a low range analyzer and

a ''default high range value,'' as described in paragraph 2.1.2.4(e) of this section, in lieu of maintaining and quality assuring a high-scale range. Other monitor configurations are subject to the approval of the Administrator.

(c) The owner or operator shall designate the monitoring systems and components in the monitoring plan under § 75.53 as follows: designate the low and high ranges as separate NO_X components of a single, primary NO_X monitoring system; or designate the low and high ranges as the NO_X components of two separate, primary NO_X monitoring systems; or designate the normal range as a primary monitoring system and the other range as a non-redundant backup monitoring system; or, when a single, dual-range NO_X analyzer is used, designate the low and high ranges as a single NO_X component of a primary NO_X monitoring system (if this option is selected, use a special dual-range component type code, as specified by the Administrator, to satisfy the requirements of § 75.53(e)(1)(iv)(D)); or, for units with add-on NO_X controls, if the default high range value is used, designate the low range analyzer as the NO_X component of the primary NO_X monitoring system. Do not designate the default high range as a monitoring system or component. Other component and system designations are subject to approval by the Administrator. Note that the component and system designations for redundant backup monitoring systems shall be the same as for primary monitoring systems.

(d) Each monitoring system designated as primary or redundant backup shall meet the initial certification and quality assurance requirements in § 75.20(c) (for primary monitoring systems), in § 75.20(d)(1) (for redundant backup monitoring systems) and appendices A and B to this part, with one exception: relative accuracy test audits (RATAs) are required only on the normal range (for dual span units with add-on NO_X emission controls, the low range is considered normal). Each monitoring system designated as non-redundant backup shall meet the applicable quality assurance requirements in § 75.20(d)(2).

(e) For dual span units with add-on NO_X emission controls (e.g., steam injection, water injection, SCR, or SNCR), the owner or operator may, as an alternative to maintaining and quality assuring a high monitor range, use a default high range value. If this option is chosen, the owner or operator shall report a default value of 200.0 percent of the MPC for each unit operating hour in which the full-scale of the low range NO_X analyzer is exceeded.

(f) The high span and range shall be determined in accordance with section 2.1.2.3 of this appendix. The low span value shall be 100.0 to 125.0 percent of the MEC, rounded up to the next highest multiple of 10 ppm (or 100 ppm, if appropriate). If more than one MEC value (as determined in section 2.1.2.2 of this appendix) is <20.0 percent of the high full-scale range value, the low span value shall be based upon whichever MEC value is closest to 20.0 percent of the high range value. The low range must be greater than or equal to the low span value, and the required calibration gases for the low range must be selected based on the low span value. For units with two NO_X spans, use the low range whenever NO_X concentrations are expected to be consistently <20.0 percent of the high range value, i.e., when the MEC of the fuel being combusted is <20.0 percent of the high range value. When the full-scale of the low range is exceeded, the high range shall be used to measure and record the NO_X concentrations; or, if applicable, the default high range value in paragraph (e) of this section shall be reported for each hour of the full-scale exceedance.

2.1.2.5 Adjustment of Span and Range

For each affected unit or common stack, the owner or operator shall make a periodic evaluation of the MPC, MEC, span, and range values for each NO_X monitor (at a minimum, an annual evaluation is required) and shall make any necessary span and range adjustments, with corresponding monitoring plan updates, as described in paragraphs (a) and (b) of this section. Span and range adjustments may be required, for example, as a result of changes in the fuel supply, changes in the manner of operation of the unit, or installation or removal of emission controls. In implementing the provisions in paragraphs (a) and (b) of this section, note that NO_X data recorded during short-term, non-representative operating conditions (e.g., a trial burn of a different type of fuel) shall be excluded from consideration. The owner or operator shall keep the results of the most recent span and range evaluation on-site, in a format suitable for inspection. Make each required span or range adjustment no later than 45 days after the end of the quarter in which the need to adjust the span or range is identified, except that up to 90 days after the end of that quarter may be taken to implement a span adjustment if the calibration gases currently being used for daily calibration error tests and linearity checks are unsuitable for use with the new span value.

(a) If the fuel supply, emission controls, or other process parameters change such that the maximum expected concentration or the maximum potential concentration changes significantly, adjust the NO_X pollutant concentration span(s) and (if necessary) monitor range(s) to assure the continued accuracy of the monitoring system. A ''significant'' change in the MPC or MEC means that the guidelines in section 2.1 of this appendix can no longer be met, as determined by either a periodic evaluation by the owner or operator or from the results of an audit by the Administrator. The owner or operator should evaluate whether any planned changes in operation of the unit or stack may affect the concentration of emissions being emitted from the unit and should plan any necessary span and range changes needed to account for these changes, so that they are made in as timely a manner as practicable to coordinate with the operational changes. An example of a change that may require a span and range adjustment is the installation of low-NO_X burner technology on a previously uncontrolled unit. Determine the adjusted span(s) using the procedures in section 2.1.2.3 or 2.1.2.4 of this appendix (as applicable). Select the full-scale range(s) of the instrument to be greater than or equal to the adjusted span value(s) and to be consistent with the guidelines of section 2.1 of this appendix.

(b) Whenever a full-scale range is exceeded during a quarter and the exceedance is not caused by a monitor out-of-control period, proceed as follows:

(1) For exceedances of the high range, report 200.0 percent of the current full-scale range as the hourly NO_X concentration for each hour of the full-scale exceedance and make appropriate adjustments to the MPC, span, and range to prevent future full-scale exceedances.

(2) For units with two NO_X spans and ranges, if the low range is exceeded, no further action is required, provided that the high range is available and is not out-of-control or out-of-service for any reason. However, if the high range is not able to provide quality assured data at the time of the low range exceedance or at any time during the continuation of the exceedance, report the MPC as the NO_X concentration until the readings return to the low range or until the high range is able to provide quality assured data (unless the reason that the high-scale range is not able to provide quality assured data is because the high-scale range has been exceeded; if the high-scale range is exceeded, follow the procedures in paragraph (b)(1) of this section).

(c) Whenever changes are made to the MPC, MEC, full-scale range, or span value of the NO_X monitor as described in paragraphs (a) and (b) of this section, record and report (as applicable) the new full-scale range setting, the new MPC or MEC, maximum potential NO_X emission rate, and the adjusted span value in an updated monitoring plan for the unit. The monitoring plan update shall be made in the quarter in which the changes become effective. In addition, record and report the adjusted span as part of the records for the daily calibration error test and linearity check required by appendix B to this part. Whenever the span value is adjusted, use calibration gas concentrations that meet the requirements of section 5.1 of this appendix, based on the adjusted span value. When a span adjustment is significant enough that the calibration gases currently being used for daily calibration error tests and linearity checks are unsuitable for use with the new span value, a linearity test using the new calibration gases must be performed and passed. Data from the monitor are considered invalid from the hour in which the span is adjusted until the required linearity check is passed in accordance with section 6.2 of this appendix.

2.1.3 CO_2 and O_2 Monitors

For an O_2 monitor (including O_2 monitors used to measure CO_2 emissions or percentage moisture), select a span value between 15.0 and 25.0 percent O_2. For a CO_2 monitor installed on a boiler, select a span value between 14.0 and 20.0 percent CO_2. For a CO_2 monitor installed on a combustion turbine, an alternative span value between 6.0 and 14.0 percent CO_2 may be used. An alternative O_2 span value below 15.0 percent O_2 may be used if an appropriate technical justification is included in the monitoring plan (e.g., O_2 concentrations above a certain level create an unsafe operating condition).

Select the full-scale range of the instrument to be consistent with section 2.1 of this appendix and to be greater than or equal to the span value. Select the calibration gas concentrations for the daily calibration error tests and linearity checks in accordance with section 5.1 of this appendix, as percentages of the span value. For O_2 monitors with span values ≥21.0 percent O_2, purified instrument air containing 20.9 percent O_2 may be used as the high-level calibration material.

2.1.3.1 Maximum Potential Concentration of CO_2

For CO_2 pollutant concentration monitors, the maximum potential concentration shall be 14.0 percent CO_2 for boilers and 6.0 percent CO_2 for combustion turbines. Alternatively, the owner or operator may determine the MPC based on a minimum of 720 hours of quality assured historical CEM data representing the full operating load range of the unit(s). Note that the MPC for CO_2 monitors shall only be used for the purpose of providing substitute data under this part. The CO_2 monitor span and range shall be determined according to section 2.1.3 of this appendix.

2.1.3.2 Minimum Potential Concentration of O_2

The owner or operator of a unit that uses a flow monitor and an O_2 diluent monitor to determine heat input in accordance with Equation F–17 or F–18 in appendix F to this part shall, for the purposes of providing substitute data under § 75.36, determine the minimum potential O_2 concentration. The minimum potential O_2 concentration shall be based upon 720 hours or more of quality-assured CEM data, representing the full operating load range of the unit(s). The minimum potential O_2 concentration shall be the lowest quality-assured hourly average O_2 concentration recorded in the 720 (or more) hours of data used for the determination.

2.1.3.3 Adjustment of Span and Range

Adjust the span value and range of a CO_2 or O_2 monitor in accordance with section 2.1.1.5 of this appendix (insofar as those provisions are applicable), with the term ''CO_2 or O_2'' applying instead of the term ''SO_2''. Set the new span and range in accordance with section 2.1.3 of this appendix and report the new span value in the monitoring plan.

2.1.4 Flow Monitors

Select the full-scale range of the flow monitor so that it is consistent with section 2.1 of this appendix and can accurately measure all potential volumetric flow rates at the flow monitor installation site.

2.1.4.1 Maximum Potential Velocity and Flow Rate

For this purpose, determine the span value of the flow monitor using the following procedure. Calculate the maximum potential velocity (MPV) using Equation A–3a or A–3b or determine the MPV (wet basis) from velocity traverse testing using Reference Method 2 (or its allowable alternatives) in appendix A to part 60 of this chapter. If using test values, use the highest average velocity (determined from the Method 2 traverses) measured at or near the maximum unit operating load. Express the MPV in units of wet standard feet per minute (fpm). For the purpose of providing substitute data during periods of missing flow rate data in accordance with §§ 75.31 and 75.33 and as required elsewhere in this part, calculate the maximum potential stack gas flow rate (MPF) in units of standard cubic feet per hour (scfh), as the product of the MPV (in units of wet, standard fpm) times 60, times the cross-sectional area of the stack or duct (in ft^2) at the flow monitor location.

$$MPV = \left(\frac{F_d H_f}{A}\right)\left(\frac{20.9}{20.9 - \%O_{2d}}\right)\left(\frac{100}{100 - \%H_2O}\right) \qquad \text{(Eq. A-3a)}$$

or

$$MPV = \left(\frac{F_c H_f}{A}\right)\left(\frac{100}{\%CO_{2d}}\right)\left(\frac{100}{100 - \%H_2O}\right) \qquad \text{(Eq. A-3b)}$$

Where:

MPV = maximum potential velocity (fpm, standard wet basis).
F_d = dry-basis F factor (dscf/mmBtu) from Table 1, Appendix F to this part.
F_c = carbon-based F factor (scf CO_2/mmBtu) from Table 1, Appendix F to this part.
Hf = maximum heat input (mmBtu/minute) for all units, combined, exhausting to the stack or duct where the flow monitor is located.
A = inside cross sectional area (ft^2) of the flue at the flow monitor location.
$\%O_{2d}$ = maximum oxygen concentration, percent dry basis, under normal operating conditions.
$\%CO_{2d}$ = minimum carbon dioxide concentration, percent dry basis, under normal operating conditions.
$\%H_2O$ = maximum percent flue gas moisture content under normal operating conditions.

2.1.4.2 Span Values and Range

Determine the span and range of the flow monitor as follows. Convert the MPV, as determined in section 2.1.4.1 of this appendix, to the same measurement units of flow rate that are used for daily calibration error tests (e.g., scfh, kscfh, kacfm, or differential pressure (inches of water)). Next, determine the ''calibration span value'' by multiplying the MPV (converted to equivalent daily calibration error units) by a factor no less than 1.00 and no greater than 1.25, and rounding up the result to at least two significant figures. For calibration span values in inches of water, retain at least two decimal places. Select appropriate reference signals for the daily calibration error tests as percentages of the calibration span value. Finally, calculate the ''flow rate span value'' (in scfh) as the product of the MPF, as determined in section 2.1.4.1 of this appendix, times the same factor (between 1.00 and 1.25) that was used to calculate the calibration span value. Round off the flow rate span value to the nearest 1000 scfh. Select the full-scale range of the flow monitor so that it is greater than or equal to the span value and is consistent with section 2.1 of this appendix. Include in the monitoring plan for the unit: calculations of the MPV, MPF, calibration span value, flow rate span value, and full-scale range (expressed both in scfh and, if different, in the measurement units of calibration).

2.1.4.3 Adjustment of Span and Range

For each affected unit or common stack, the owner or operator shall make a periodic evaluation of the MPV, MPF, span, and range values for each flow rate monitor (at a minimum, an annual evaluation is required) and shall make any necessary span and range adjustments with corresponding monitoring plan updates, as described in paragraphs (a) through (c) of this section 2.1.4.3. Span and range adjustments may be required, for example, as a result of changes in the fuel supply, changes in the stack or ductwork configuration, changes in the manner of operation of the unit, or installation or removal of emission controls. In implementing the provisions in paragraphs (a) and (b) of this section 2.1.4.3, note that flow rate data recorded during short-term, non-representative operating conditions (e.g., a trial burn of a different type of fuel) shall be excluded from consideration. The owner or operator shall keep the results of the most recent span and range evaluation on-site, in a format suitable for inspection. Make each required span or range adjustment no later than 45 days after the end of the quarter in which the need to adjust the span or range is identified.

(a) If the fuel supply, stack or ductwork configuration, operating parameters, or other conditions change such that the maximum potential flow rate changes significantly, adjust the span and range to assure the continued accuracy of the flow monitor. A ''significant'' change in the MPV or MPF means that the guidelines of section 2.1 of this appendix can no longer be met, as

determined by either a periodic evaluation by the owner or operator or from the results of an audit by the Administrator. The owner or operator should evaluate whether any planned changes in operation of the unit may affect the flow of the unit or stack and should plan any necessary span and range changes needed to account for these changes, so that they are made in as timely a manner as practicable to coordinate with the operational changes. Calculate the adjusted calibration span and flow rate span values using the procedures in section 2.1.4.2 of this appendix.

(b) Whenever the full-scale range is exceeded during a quarter, provided that the exceedance is not caused by a monitor out-of-control period, report 200.0 percent of the current full-scale range as the hourly flow rate for each hour of the full-scale exceedance. If the range is exceeded, make appropriate adjustments to the MPF, flow rate span, and range to prevent future full-scale exceedances. Calculate the new calibration span value by converting the new flow rate span value from units of scfh to units of daily calibration. A calibration error test must be performed and passed to validate data on the new range.

(c) Whenever changes are made to the MPV, MPF, full-scale range, or span value of the flow monitor, as described in paragraphs (a) and (b) of this section, record and report (as applicable) the new full-scale range setting, calculations of the flow rate span value, calibration span value, MPV, and MPF in an updated monitoring plan for the unit. The monitoring plan update shall be made in the quarter in which the changes become effective. Record and report the adjusted calibration span and reference values as parts of the records for the calibration error test required by appendix B to this part. Whenever the calibration span value is adjusted, use reference values for the calibration error test that meet the requirements of section 2.2.2.1 of this appendix, based on the most recent adjusted calibration span value. Perform a calibration error test according to section 2.1.1 of appendix B to this part whenever making a change to the flow monitor span or range, unless the range change also triggers a recertification under § 75.20(b).

2.1.5 Minimum Potential Moisture Percentage

Except as provided in section 2.1.6 of this appendix, the owner or operator of a unit that uses a continuous moisture monitoring system to correct emission rates and heat inputs from a dry basis to a wet basis (or vice-versa) shall, for the purpose of providing substitute data under § 75.37, use a default value of 3.0 percent H_2O as the minimum potential moisture percentage. Alternatively, the minimum potential moisture percentage may be based upon 720 hours or more of quality-assured CEM data, representing the full operating load range of the unit(s). If this option is chosen, the minimum potential moisture percentage shall be the lowest quality-assured hourly average H_2O concentration recorded in the 720 (or more) hours of data used for the determination.

2.1.6 Maximum Potential Moisture Percentage

When Equation 19–3, 19–4 or 19–8 in Method 19 in appendix A to part 60 of this chapter is used to determine NO_X emission rate, the owner or operator of a unit that uses a continuous moisture monitoring system shall, for the purpose of providing substitute data under § 75.37, determine the maximum potential moisture percentage. The maximum potential moisture percentage shall be based upon 720 hours or more of quality-assured CEM data, representing the full operating load range of the unit(s). The maximum potential moisture percentage shall be the highest quality-assured hourly average H_2O concentration recorded in the 720 (or more) hours of data used for the determination.

55. Appendix A to part 75 is amended by revising section 3.1, the last sentence in the first paragraph of section 3.2, and section 3.3.2; by adding section 3.3.6; and by revising sections 3.3.7, 3.4.1 and 3.5 to read as follows:

3. Performance Specifications

3.1 Calibration Error

(a) The calibration error performance specifications in this section apply only to 7-day calibration error tests under sections 6.3.1 and 6.3.2 of this appendix and to the offline calibration demonstration described in section 2.1.1.2 of appendix B to this part. The calibration error limits for daily operation of the continuous monitoring systems required under this part are found in section 2.1.4(a) of appendix B to this part.

(b) The calibration error of SO_2 and NO_X pollutant concentration monitors shall not deviate from the reference value of either the zero or upscale calibration gas by more than 2.5 percent of the span of the instrument, as calculated using Equation A–5 of this appendix. Alternatively, where the span value is less than 200 ppm, calibration error test results are also acceptable if the absolute value of the difference between the monitor response value and the reference value, $|R-A-$ in Equation A–5 of this appendix, is ≤5 ppm. The calibration error of CO_2 or O_2 monitors (including O_2 monitors used to measure CO_2 emissions or percent moisture) shall not deviate from the reference value of the zero or upscale calibration gas by >0.5 percent O_2 or CO_2, as calculated using the term $-R-A|$ in the numerator of Equation A–5 of this appendix. The calibration error of flow monitors shall not exceed 3.0 percent of the calibration span value of the instrument, as calculated using Equation A–6 of this appendix. For differential pressure-type flow monitors, the calibration error test results are also acceptable if |R–A|, the absolute value of the difference between the monitor response and the reference value in Equation A–6, does not exceed 0.01 inches of water.

3.2 Linearity Check

* * * For CO_2 or O_2 monitors (including O_2 monitors used to measure CO_2 emissions or percent moisture):

* * * * *

3.3 * * *

3.3.2 Relative Accuracy for NO_X-Diluent Continuous Emission Monitoring Systems

(a) The relative accuracy for NO_X-diluent continuous emission monitoring systems shall not exceed 10.0 percent.

(b) For affected units where the average of the monitoring system measurements of NO_X emission rate during the relative accuracy test audit is less than or equal to 0.200 lb/mmBtu, the mean value of the continuous emission monitoring system measurements shall not exceed ±0.020 lb/mmBtu of the reference method mean value whenever the relative accuracy specification of 10.0 percent is not achieved.

* * * * *

3.3.6 Relative Accuracy for Moisture Monitoring Systems

The relative accuracy of a moisture monitoring system shall not exceed 10.0 percent. The relative accuracy test results are also acceptable if the mean difference of the reference method measurements (in percent H_2O) and the corresponding moisture monitoring system measurements (in percent H_2O), calculated using Equation A–7 of this appendix, are within ±1.5 percent H_2O.

3.3.7 Relative Accuracy for NO_X Concentration Monitoring Systems

(a) The following requirement applies only to NO_X concentration monitoring systems (i.e., NO_X pollutant concentration monitors) that are used to determine NO_X mass emissions, where the owner or operator elects to monitor and report NO_X mass emissions using a NO_X concentration monitoring system and a flow monitoring system.

(b) The relative accuracy for NO_X concentration monitoring systems shall not exceed 10.0 percent. Alternatively, for affected units where the average of the monitoring system measurements of NO_X concentration during the relative accuracy test audit is less than or equal to 250.0 ppm, the mean value of the continuous emission monitoring system measurements shall not exceed ±15.0 ppm of the reference method mean value.

3.4 * * *

3.4.1 SO_2 Pollutant Concentration Monitors, NO_X Concentration Monitoring Systems and NO_X-Diluent Continuous Emission Monitoring Systems

SO_2 pollutant concentration monitors, NO_X-diluent continuous emission monitoring systems and NO_X concentration monitoring systems used to determine NO_X mass emissions, as defined in § 75.71(a)(2), shall not be biased low as determined by the test procedure in section 7.6 of this appendix. The bias specification applies to all SO_2 pollutant concentration monitors and to all NO_X concentration monitoring systems, including those measuring an average SO_2 or NO_X concentration of 250.0 ppm or less, and to all NO_X-diluent continuous emission monitoring systems, including those measuring an average NO_X emission rate of 0.200 lb/mmBtu or less.

* * * * *

3.5 Cycle Time

The cycle time for pollutant concentration monitors, oxygen monitors used to determine percent moisture, and any other continuous emission monitoring system(s) required to perform a cycle time test shall not exceed 15 minutes.

56. Appendix A to part 75 is amended by revising the first sentence of the first paragraph of section 4 and paragraph (6) to read as follows:

4. Data Acquisition and Handling Systems

Automated data acquisition and handling systems shall read and record the full range of pollutant concentrations and volumetric flow from zero through span and provide a continuous, permanent record of all measurements and required information as an ASCII flat file capable of transmission both by direct computer-to-computer electronic transfer via modem and EPA-provided software and by an IBM-compatible personal computer diskette.

* * * * *

(6) Provide a continuous, permanent record of all measurements and required information as an ASCII flat file capable of transmission both by direct computer-to-computer electronic transfer via modem and EPA-provided software and by an IBM-compatible personal computer diskette.

57. Appendix A to part 75 is amended by revising sections 5 through 5.1.6, adding sections 5.1.7 through 5.1.8, and revising sections 5.2 through 5.2.4 to read as follows:

5. Calibration Gas

5.1 Reference Gases

For the purposes of part 75, calibration gases include the following:

5.1.1 Standard Reference Materials (SRM)

These calibration gases may be obtained from the National Institute of Standards and Technology (NIST) at the following address: Quince Orchard and Cloppers Road, Gaithersburg, MD 20899–0001.

5.1.2 SRM-Equivalent Compressed Gas Primary Reference Material (PRM)

Contact the Gas Metrology Team, Analytical Chemistry Division, Chemical Science and Technology Laboratory of NIST, at the address in section 5.1.1, for a list of vendors and cylinder gases.

5.1.3 NIST Traceable Reference Materials

Contact the Gas Metrology Team, Analytical Chemistry Division, Chemical Science and Technology Laboratory of NIST, at the address in section 5.1.1, for a list of vendors and cylinder gases.

5.1.4 EPA Protocol Gases

(a) EPA Protocol gases must be vendor-certified to be within 2.0 percent of the concentration specified on the cylinder label (tag value), using the uncertainty calculation procedure in section 2.1.8 of the ''EPA Traceability Protocol for Assay and Certification of Gaseous Calibration Standards,'' September 1997, EPA–600/R–97/121.

(b) A copy of EPA–600/R–97/121 is available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA, 703–487–4650 and from the Office of Research and Development, (MD–77B), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711.

5.1.5 Research Gas Mixtures

Research gas mixtures must be vendor-certified to be within 2.0 percent of the concentration specified on the cylinder label (tag value), using the uncertainty calculation procedure in section 2.1.8 of the ''EPA Traceability Protocol for Assay and Certification of Gaseous Calibration Standards,'' September 1997, EPA–600/R–97/121. Inquiries about the RGM program should be directed to: National Institute of Standards and Technology, Analytical Chemistry Division, Chemical Science and Technology Laboratory, B–324 Chemistry, Gaithersburg, MD 20899.

5.1.6 Zero Air Material

Zero air material is defined in § 72.2 of this chapter.

5.1.7 NIST/EPA-Approved Certified Reference Materials

Existing certified reference materials (CRMs) that are still within their certification period may be used as calibration gas.

5.1.8 Gas Manufacturer's Intermediate Standards

Gas manufacturer's intermediate standards is defined in § 72.2 of this chapter.

5.2 Concentrations

Four concentration levels are required as follows.

5.2.1 Zero-level Concentration

0.0 to 20.0 percent of span, including span for high-scale or both low- and high-scale for SO_2, NO_X, CO_2, and O_2 monitors, as appropriate.

5.2.2 Low-level Concentration

20.0 to 30.0 percent of span, including span for high-scale or both low- and high-scale for SO_2, NO_X, CO_2, and O_2 monitors, as appropriate.

5.2.3 Mid-level Concentration

50.0 to 60.0 percent of span, including span for high-scale or both low- and high-scale for SO_2, NO_X, CO_2, and O_2 monitors, as appropriate.

5.2.4 High-level Concentration

80.0 to 100.0 percent of span, including span for high-scale or both low-and high-scale for SO_2, NO_X, CO_2, and O_2 monitors, as appropriate.

58. Appendix A to part 75 is amended by revising sections 6.2, 6.3.1, 6.3.2, 6.4, 6.5, 6.5.1, 6.5.2, 6.5.6, 6.5.7, 6.5.9 and 6.5.10, and adding sections 6.5.2.1, 6.5.2.2, 6.5.6.1, 6.5.6.2, and 6.5.6.3 to read as follows:

6. Certification Tests and Procedures

* * * * *

6.2 Linearity Check (General Procedures)

Check the linearity of each SO_2, NO_X, CO_2, and O_2 monitor while the unit, or group of units for a common stack, is combusting fuel at conditions of typical stack temperature and pressure; it is not necessary for the unit to be generating electricity during this test. Notwithstanding these requirements, if the SO_2 or NO_X span value for a particular monitor range is ≤30 ppm, that range is exempted from the linearity test requirements of this part. For units using emission controls and other units using both a high and a low span, perform a linearity check on both the low- and high-scales for initial certification. For on-going quality assurance of the CEMS, perform linearity checks, using the procedures in this section, on the range(s) and at the frequency specified in section 2.2.1 of appendix B to this part. Challenge each monitor with calibration gas, as defined in section 5.1 of this appendix, at the low-, mid-, and high-range concentrations specified in section 5.2 of this appendix. Introduce the calibration gas at the gas injection port, as specified in section 2.2.1 of this appendix. Operate each monitor at its normal operating temperature and conditions. For extractive and dilution type monitors, pass the calibration gas through all filters, scrubbers, conditioners, and other monitor components used during normal sampling and through as much of the sampling probe as is practical. For in-situ type monitors, perform calibration checking all active electronic and optical components, including the transmitter, receiver, and analyzer. Challenge the monitor three times with each reference gas (see example data sheet in Figure 1). Do not use the same gas twice in succession. To the extent practicable, the duration of each linearity test, from the hour of the first injection to the hour of the last injection, shall not exceed 24 unit operating hours. Record the monitor response from the data acquisition and handling system. For each concentration, use the average of the responses to determine the error in linearity using Equation A–4 in this appendix. Linearity checks are acceptable for monitor or monitoring system certification, recertification, or quality assurance if none of the test results exceed the applicable performance specifications in section 3.2 of this appendix. The status of emission data from a CEMS prior to and during a linearity test period shall be determined as follows:

(a) For the initial certification of a CEMS, data from the monitoring system are considered invalid until all certification tests, including the linearity test, have been successfully completed, unless the data validation procedures in § 75.20(b)(3) are used. When the procedures in § 75.20(b)(3) are followed, the words ''initial certification'' apply instead of ''recertification,'' and complete all of the initial certification tests by the applicable deadline in § 75.4, rather than within the time periods specified in § 75.20(b)(3)(iv) for the individual tests.

(b) For the routine quality assurance linearity checks required by section 2.2.1 of appendix B to this part, use the data validation procedures in section 2.2.3 of appendix B to this part.

(c) When a linearity test is required as a diagnostic test or for recertification, use the data validation procedures in § 75.20(b)(3).

(d) For linearity tests of non-redundant backup monitoring systems, use the data validation procedures in § 75.20(d)(2)(iii).

(e) For linearity tests performed during a grace period and after the expiration of a grace period, use the data validation procedures in sections 2.2.3 and 2.2.4, respectively, of appendix B to this part.

(f) For all other linearity checks, use the data validation procedures in section 2.2.3 of appendix B to this part.

6.3 * * *

6.3.1 Gas Monitor 7-day Calibration Error Test

Measure the calibration error of each SO_2 monitor, each NO_X monitor and each CO_2 or O_2 monitor while the unit is combusting fuel (but not necessarily generating electricity) once each day for 7 consecutive operating days according to the following procedures. (In the event that extended unit outages occur after the commencement of the test, the 7 consecutive unit operating days need not be 7 consecutive calendar days.) Units using dual span monitors must perform the calibration error test on both high- and low-scales of the pollutant concentration monitor. The calibration error test procedures in this section and in section 6.3.2 of this appendix shall also be used to perform the daily assessments and additional calibration error tests required under sections 2.1.1 and 2.1.3 of appendix B to this part. Do not make manual or automatic adjustments to the monitor settings until after taking measurements at both zero and high concentration levels for that day during the 7-day test. If automatic adjustments are made following both injections, conduct the calibration error test such that the magnitude of the adjustments can be determined and recorded. Record and report test results for each day using the unadjusted concentration measured in the calibration error test prior to making any manual or automatic adjustments (i.e., resetting the calibration). The calibration error tests should be approximately 24 hours apart, (unless the 7-day test is performed over non-consecutive days). Perform calibration error tests at both the zero-level concentration and high-level concentration, as specified in section 5.2 of this appendix. Alternatively, a mid-level concentration gas (50.0 to 60.0 percent of the span value) may be used in lieu of the high-level gas, provided that the mid-level gas is more representative of the actual stack gas concentrations. In addition, repeat the procedure for SO_2 and NO_X pollutant concentration monitors using the low-scale for units equipped with emission controls or other units with dual span monitors. Use only calibration gas, as specified in section 5.1 of this appendix. Introduce the calibration gas at the gas injection port, as specified in section 2.2.1 of this appendix. Operate each monitor in its normal sampling mode. For extractive and dilution type monitors, pass the calibration gas through all filters, scrubbers, conditioners, and other monitor components used during normal sampling and through as much of the sampling probe as is practical. For in-situ type monitors, perform calibration, checking all active electronic and optical components, including the transmitter, receiver, and analyzer. Challenge the pollutant concentration monitors and CO_2 or O_2 monitors once with each calibration gas. Record the monitor response from the data acquisition and handling system. Using Equation A–5 of this appendix, determine the calibration error at each concentration once each day (at approximately 24-hour intervals) for 7 consecutive days according to the procedures given in this section. The results of a 7-day calibration error test are acceptable for monitor or monitoring system certification, recertification or diagnostic testing if none of these daily calibration error test results exceed the applicable performance specifications in section 3.1 of this appendix.The status of emission data from a gas monitor prior to and during a 7-day calibration error test period shall be determined as follows:

(a) For initial certification, data from the monitor are considered invalid until all certification tests, including the 7-day calibration error test, have been successfully completed, unless the data validation procedures in § 75.20(b)(3) are used. When the procedures in § 75.20(b)(3) are followed, the words ''initial certification'' apply instead of ''recertification,'' and complete all of the initial certification tests by the applicable deadline in § 75.4, rather than within the time periods specified in § 75.20(b)(3)(iv) for the individual tests.

(b) When a 7-day calibration error test is required as a diagnostic test or for recertification, use the data validation procedures in § 75.20(b)(3).

6.3.2 Flow Monitor 7-day Calibration Error Test

Perform the 7-day calibration error test of a flow monitor, when required for certification, recertification or diagnostic testing, according to the following procedures. Introduce the reference signal corresponding to the values specified in section 2.2.2.1 of this appendix to the probe tip (or equivalent), or to the transducer. During the 7-day certification test period, conduct the calibration error test while the unit is operating once each unit operating day (as close to 24-hour intervals as practicable). In the event that extended unit outages occur after the commencement of the test, the 7 consecutive operating days need not be 7 consecutive calendar days. Record the flow monitor responses by means of the data acquisition and handling system. Calculate the calibration error using Equation A–6 of this appendix. Do not perform any corrective maintenance, repair, or replacement upon the flow monitor during the 7-day test period other than that required in the quality assurance/quality control plan required by appendix B to this part. Do not make adjustments between the zero and high reference level measurements on any day during the 7-day test. If the flow monitor operates within the calibration error performance specification (i.e., less than or equal to 3.0 percent error each day and requiring no corrective maintenance, repair, or replacement during the 7-day test period), the flow monitor passes the calibration error test. Record all maintenance activities and the magnitude of any adjustments. Record output readings from the data acquisition and handling system before and after all adjustments. Record and report all calibration error test results using the unadjusted flow rate measured in the calibration error test prior to resetting the calibration. Record all adjustments made during the 7-day period at the time the adjustment is made, and report them in the certification or recertification application. The status of emissions data from a flow monitor prior to and during a 7-day calibration error test period shall be determined as follows:

(a) For initial certification, data from the monitor are considered invalid until all certification tests, including the 7-day calibration error test, have been successfully completed, unless the data validation procedures in § 75.20(b)(3) are used. When the procedures in § 75.20(b)(3) are followed, the words ''initial certification'' apply instead of ''recertification,'' and complete all of the initial certification tests by the applicable deadline in § 75.4, rather than within the time periods specified in § 75.20(b)(3)(iv) for the individual tests.

(b) When a 7-day calibration error test is required as a diagnostic test or for recertification, use the data validation procedures in § 75.20(b)(3).

6.4 Cycle Time Test

Perform cycle time tests for each pollutant concentration monitor and continuous emission monitoring system while the unit is operating, according to the following procedures (see also Figure 6 at the end of this appendix). Use a zero-level and a high-level calibration gas (as defined in section 5.2 of this appendix) alternately. To determine the upscale elapsed time, inject a zero-level concentration calibration gas into the probe tip (or injection port leading to the calibration cell, for in situ systems with no probe). Record the stable starting gas value and start time, using the data acquisition and handling system (DAHS). Next, allow the monitor to measure the concentration of flue gas emissions until the response stabilizes. Record the stable ending stack emissions value and the end time of the test using the DAHS. Determine the upscale elapsed time as the time it takes for 95.0 percent of the step change to be achieved between the stable starting gas value and the stable ending stack emissions value. Then repeat the procedure, starting by injecting the high-level gas concentration to determine the downscale elapsed time, which is the time it takes for 95.0 percent of the step change to be achieved between the stable starting gas value and the stable ending stack emissions value. End the downscale test by measuring the stable concentration of flue gas emissions. Record the stable starting and ending monitor values, the start and end times, and the downscale elapsed time for the monitor using the DAHS. A stable value is equivalent to a reading with a change of less than 2.0 percent of the span value for 2 minutes, or a reading with a change of less than 6.0 percent from the measured average concentration over 6 minutes. (Owners or operators of systems which do not record data in 1-minute or 3-minute intervals may petition the Administrator under § 75.66 for alternative stabilization criteria). For monitors or monitoring systems that perform a series of operations (such as purge, sample, and analyze), time the injections of the calibration gases so they will produce the

longest possible cycle time. Report the slower of the two elapsed times (upscale or downscale) as the cycle time for the analyzer. (See Figure 5 at the end of this appendix.) For the NOx-diluent continuous emission monitoring system test and SO_2-diluent continuous emission monitoring system test, record and report the longer cycle time of the two component analyzers as the system cycle time. For time-shared systems, this procedure must be done at all probe locations that will be polled within the same 15-minute period during monitoring system operations. To determine the cycle time for time-shared systems, add together the longest cycle time obtained at each of the probe locations. Report the sum of the longest cycle time at each of the probe locations plus the sum of the time required for all purge cycles (as determined by the continuous emission monitoring system manufacturer) at each of the probe locations as the cycle time for each of the time-shared systems. For monitors with dual ranges, report the test results from on the range giving the longer cycle time. Cycle time test results are acceptable for monitor or monitoring system certification, recertification or diagnostic testing if none of the cycle times exceed 15 minutes. The status of emissions data from a monitor prior to and during a cycle time test period shall be determined as follows:

(a) For initial certification, data from the monitor are considered invalid until all certification tests, including the cycle time test, have been successfully completed, unless the data validation procedures in § 75.20(b)(3) are used. When the procedures in § 75.20(b)(3) are followed, the words ''initial certification'' apply instead of ''recertification,'' and complete all of the initial certification tests by the applicable deadline in § 75.4, rather than within the time periods specified in § 75.20(b)(3)(iv) for the individual tests.

(b) When a cycle time test is required as a diagnostic test or for recertification, use the data validation procedures in § 75.20(b)(3).

6.5 Relative Accuracy and Bias Tests (General Procedures)

Perform the required relative accuracy test audits (RATAs) as follows for each CO_2 pollutant concentration monitor (including O_2 monitors used to determine CO_2 pollutant concentration), each SO_2 pollutant concentration monitor, each NO_X concentration monitoring system used to determine NO_X mass emissions, each flow monitor, each NO_X-diluent continuous emission monitoring system, each O_2 or CO_2 diluent monitor used to calculate heat input, each moisture monitoring system and each SO_2-diluent continuous emission monitoring system. For NO_X concentration monitoring systems used to determine NO_X mass emissions, as defined in § 75.71(a)(2), use the same general RATA procedures as for SO_2 pollutant concentration monitors; however, use the reference methods for NO_X concentration specified in section 6.5.10 of this appendix:

(a) Except as provided in § 75.21(a)(5), perform each RATA while the unit (or units, if more than one unit exhausts into the flue) is combusting the fuel that is normal for that unit (for some units, more than one type of fuel may be considered normal, e.g., a unit that combusts gas or oil on a seasonal basis). When relative accuracy test audits are performed on continuous emission monitoring systems or component(s) on bypass stacks/ducts, use the fuel normally combusted by the unit (or units, if more than one unit exhausts into the flue) when emissions exhaust through the bypass stack/ducts.

(b) Perform each RATA at the load level(s) specified in section 6.5.1 or 6.5.2 of this appendix or in section 2.3.1.3 of appendix B to this part, as applicable.

(c) For monitoring systems with dual ranges, perform the relative accuracy test on the range normally used for measuring emissions. For units with add-on SO_2 or NO_x controls or for units that need a dual range to record high concentration ''spikes'' during startup conditions, the low range is considered normal. However, for some dual span units (e.g., for units that use fuel switching or for which the emission controls are operated seasonally), either of the two measurement ranges may be considered normal; in such cases, perform the RATA on the range that is in use at the time of the scheduled test.

(d) Record monitor or monitoring system output from the data acquisition and handling system.

(e) Complete each single-load relative accuracy test audit within a period of 168 consecutive unit operating hours, as defined in § 72.2 of this chapter (or, for CEMS installed on common stacks or bypass stacks, 168 consecutive stack operating hours, as defined in § 72.2 of this chapter). For 2-level and 3-level flow monitor RATAs, complete all of the RATAs at all levels, to the extent practicable, within a period of 168 consecutive unit (or stack) operating hours; however, if this is not possible, up to 720 consecutive unit (or stack) operating hours may be taken to complete a multiple-load flow RATA.

(f) The status of emission data from the CEMS prior to and during the RATA test period shall be determined as follows:

(1) For the initial certification of a CEMS, data from the monitoring system are considered invalid until all certification tests, including the RATA, have been successfully completed, unless the data validation procedures in § 75.20(b)(3) are used. When the procedures in § 75.20(b)(3) are followed, the words ''initial certification'' apply instead of ''recertification,'' and complete all of the initial certification tests by the applicable deadline in § 75.4, rather than within the time periods specified in § 75.20(b)(3)(iv) for the individual tests.

(2) For the routine quality assurance RATAs required by section 2.3.1 of appendix B to this part, use the data validation procedures in section 2.3.2 of appendix B to this part.

(3) For recertification RATAs, use the data validation procedures in § 75.20(b)(3).

(4) For quality assurance RATAs of non-redundant backup monitoring systems, use the data validation procedures in §§ 75.20(d)(2)(v) and (vi).

(5) For RATAs performed during and after the expiration of a grace period, use the data validation procedures in sections 2.3.2 and 2.3.3, respectively, of appendix B to this part.

(6) For all other RATAs, use the data validation procedures in section 2.3.2 of appendix B to this part.

(g) For each SO_2 or CO_2 pollutant concentration monitor, each flow monitor, each CO_2 or O_2 diluent monitor used to determine heat input, each NO_X concentration monitoring system used to determine NO_X mass emissions, as defined in § 75.71(a)(2), each moisture monitoring system and each NO_X-diluent continuous emission monitoring system, calculate the relative accuracy, in accordance with section 7.3 or 7.4 of this appendix, as applicable. In addition (except for CO_2, O_2, SO_2-diluent or moisture monitors), test for bias and determine the appropriate bias adjustment factor, in accordance with sections 7.6.4 and 7.6.5 of this appendix, using the data from the relative accuracy test audits.

6.5.1 Gas Monitoring System RATAs (Special Considerations)

(a) Perform the required relative accuracy test audits for each SO_2 or CO_2 pollutant concentration monitor, each CO_2 or O2 diluent monitor used to determine heat input, each NO_X-diluent continuous emission monitoring system, each NO_X concentration monitoring system used to determine NO_X mass emissions, as defined in § 75.71(a)(2), and each SO_2-diluent continuous emission monitoring system, at the normal load level for the unit (or combined units, if common stack), as defined in section 6.5.2.1 of this appendix. If two load levels have been designated as normal, the RATAs may be done at either load level.

(b) For the initial certification of a gas monitoring system and for recertifications in which, in addition to a RATA, one or more other tests are required (i.e., a linearity test, cycle time test, or 7-day calibration error test), EPA recommends that the RATA not be commenced until the other required tests of the CEMS have been passed.

6.5.2 Flow Monitor RATAs (Special Considerations)

(a) Except for flow monitors on bypass stacks/ducts and peaking units, perform relative accuracy test audits for the initial certification of each flow monitor at three different exhaust gas velocities (low, mid, and high), corresponding to three different load levels within the range of operation, as defined in section 6.5.2.1 of this appendix. For a common stack/duct, the three different exhaust gas velocities may be obtained from frequently used unit/load combinations for the units exhausting to the common stack. Select the three exhaust gas velocities such that the audit points at adjacent load levels (i.e., low and mid or mid and high), in megawatts (or in thousands of lb/hr of steam production), are separated by no less than 25.0 percent of the range of operation, as defined in section 6.5.2.1 of this appendix.

(b) For flow monitors on bypass stacks/ducts and peaking units, the flow monitor relative accuracy test audits for initial certification and recertification shall be single-load tests, performed at the normal load, as defined in section 6.5.2.1 of this appendix.

(c) Flow monitor recertification RATAs shall be done at three load level(s), unless otherwise specified in paragraph (b) of this section or unless otherwise specified or approved by the Administrator.

(d) The semiannual and annual quality assurance flow monitor RATAs required under appendix B to this part shall be done at the load level(s) specified in section 2.3.1.3 of appendix B to this part.

6.5.2.1 Range of Operation and Normal Load Level(s)

(a) The owner or operator shall determine the upper and lower boundaries of the ''range of operation'' for each unit (or combination of units, for common stack configurations) that uses CEMS to account for its emissions and for each unit that uses the optional fuel flow-to-load quality assurance test in section 2.1.7 of appendix D to this part. The lower boundary of the range of operation of a unit shall be the minimum safe, stable load. For common stacks, the minimum safe, stable load shall be the lowest of the minimum safe, stable loads for any of the units discharging through the stack. Alternatively, for a group of frequently-operated units that serve a common stack, the sum of the minimum safe, stable loads for the individual units may be used as the lower boundary of the range of operation. The upper boundary of the range of operation of a unit shall be the maximum sustainable load. The ''maximum sustainable load'' is the higher of either: the nameplate or rated capacity of the unit, less any physical or regulatory limitations or other deratings; or the highest sustainable unit load, based on at least four quarters of representative historical operating data. For common stacks, the maximum sustainable load is the sum of all of the maximum sustainable loads of the individual units discharging through the stack, unless this load is unattainable in practice, in which case use the highest sustainable combined load for the units that discharge through the stack, based on at least four quarters of representative historical operating data. The load values for the unit(s) shall be expressed either in units of megawatts or thousands of lb/hr of steam load.

(b) The operating levels for relative accuracy test audits shall, except for peaking units, be defined as follows: the ''low'' operating level shall be the first 30.0 percent of the range of operation; the ''mid'' operating level shall be the middle portion (30.0 to 60.0 percent) of the range of operation; and the ''high'' operating level shall be the upper end (60.0 to 100.0 percent) of the range of operation. For example, if the upper and lower boundaries of the range of operation are 100 and 1100 megawatts, respectively, then the low, mid, and high operating levels would be 100 to 400 megawatts, 400 to 700 megawatts, and 700 to 1100 megawatts, respectively.

(c) The owner or operator shall identify, for each affected unit or common stack (except for peaking units), the ''normal'' load level or levels (low, mid or high), based on the operating history of the unit(s). This requirement becomes effective on April 1, 2000; however, the owner or operator may choose to comply with this requirement prior to April 1, 2000. To identify the normal load level(s), the owner or operator shall, at a minimum, determine the relative number of operating hours at each of the three load levels, low, mid and high over the past four representative operating quarters. The owner or operator shall determine, to the nearest 0.1 percent, the percentage of the time that each load level (low, mid, high) has been used during that time period. A summary of the data used for this determination and the calculated results shall be kept on-site in a format suitable for inspection.

(d) Based on the analysis of the historical load data the owner or operator shall designate the most frequently used load level as the normal load level for the unit (or combination of units, for common stacks). The owner or operator may also designate the second most frequently used load level as an additional normal load level for the unit or stack. For peaking units, normal load designations are unnecessary; the entire operating load range shall be considered normal. If the manner of operation of the unit changes significantly, such that the designated normal load(s) or the two most frequently used load levels change, the owner or operator shall repeat the historical load analysis and shall redesignate the normal load(s) and the two most frequently used load levels, as appropriate. A minimum of two representative quarters of historical load data are required to document that a change in the manner of unit operation has occurred.

(e) Beginning on April 1, 2000, the owner or operator shall report the upper and lower boundaries of the range of operation for each unit (or combination of units, for common stacks), in units of megawatts or thousands of lb/hr of steam production, in the electronic quarterly report required under § 75.64. Except for peaking units, the owner or operator shall indicate, in the electronic quarterly report (as part of the electronic monitoring plan) the load level (or levels) designated as normal under this section and shall also indicate the two most frequently used load levels..

6.5.2.2 Multi-Load Flow RATA Results

For each multi-load flow RATA, calculate the flow monitor relative accuracy at each operating level. If a flow monitor relative accuracy test is failed or aborted due to a problem with the monitor on any level of a 2-level (or 3-level) relative accuracy test audit, the RATA must be repeated at that load level. However, the entire 2-level (or 3-level) relative accuracy test audit does not have to be repeated unless the flow monitor polynomial coefficients or K-factor(s) are changed, in which case a 3-level RATA is required.

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6.5.6 Reference Method Traverse Point Selection

Select traverse points that ensure acquisition of representative samples of pollutant and diluent concentrations, moisture content, temperature, and flue gas flow rate over the flue cross section. To achieve this, the reference method traverse points shall meet the requirements of section 3.2 of Performance Specification 2 (''PS No. 2'') in appendix B to part 60 of this chapter (for SO_2, NO_X, and moisture monitoring system RATAs), Performance Specification 3 in appendix B to part 60 of this chapter (for O_2 and CO_2 monitor RATAs), Method 1 (or 1A) (for volumetric flow rate monitor RATAs), Method 3 (for molecular weight), and Method 4 (for moisture determination) in appendix A to part 60 of this chapter. Unless otherwise specified, use only codified versions of PS No. 2 revised as of July 1, 1995, July 1, 1996 or July 1, 1997. The following alternative reference method traverse point locations are permitted for moisture and gas monitor RATAs:

(a) For moisture determinations where the moisture data are used only to determine stack gas molecular weight, a single reference method point, located at least 1.0 meter from the stack wall, may be used. For moisture monitoring system RATAs and for gas monitor RATAs in which moisture data are used to correct pollutant or diluent concentrations from a dry basis to a wet basis (or vice-versa), single-point moisture sampling may only be used if the 12-point stratification test described in section 6.5.6.1 of this appendix is performed prior to the RATA for at least one pollutant or diluent gas, and if the test is passed according to the acceptance criteria in section 6.5.6.3(b) of this appendix.

(b) For gas monitoring system RATAs, the owner or operator may use any of the following options:

(1) At any location (including locations where stratification is expected), use a minimum of six traverse points along a diameter, in the direction of any expected stratification. The points shall be located in accordance with Method 1 in appendix A to part 60 of this chapter.

(2) At locations where section 3.2 of PS No. 2 allows the use of a short reference method measurement line (with three points located at 0.4, 1.0, and 2.0 meters from the stack wall), the owner or operator may use an alternative 3-point measurement line, locating the three points at 4.4, 14.6, and 29.6 percent of the way across the stack, in accordance with Method 1 in appendix A to part 60 of this chapter.

(3) At locations where stratification is likely to occur (e.g., following a wet scrubber or when dissimilar gas streams are combined), the short measurement line from section 3.2 of PS No. 2 (or the alternative line described in paragraph (b)(2) of this section) may be used in lieu of the prescribed ''long'' measurement line in section 3.2 of PS No. 2, provided that the 12-point stratification test described in section 6.5.6.1 of this appendix is performed and passed one time at the location (according to the acceptance criteria of section 6.5.6.3(a) of this appendix) and provided that either the 12-point stratification test or the alternative (abbreviated) stratification test in section 6.5.6.2 of this appendix is performed and passed prior to each subsequent RATA at the location (according to the acceptance criteria of section 6.5.6.3(a) of this appendix).

(4) A single reference method measurement point, located no less than 1.0 meter from the stack wall and situated along one of the measurement lines used for the stratification test, may be used at any sampling location if

the 12-point stratification test described in section 6.5.6.1 of this appendix is performed and passed prior to each RATA at the location (according to the acceptance criteria of section 6.5.6.3(b) of this appendix).

6.5.6.1 Stratification Test

(a) With the unit(s) operating under steady-state conditions at normal load, as defined in section 6.5.2.1 of this appendix, use a traversing gas sampling probe to measure the pollutant (SO_2 or NO_X) and diluent (CO_2 or O_2) concentrations at a minimum of twelve (12) points, located according to Method 1 in appendix A to part 60 of this chapter.

(b) Use Methods 6C, 7E, and 3A in appendix A to part 60 of this chapter to make the measurements. Data from the reference method analyzers must be quality assured by performing analyzer calibration error and system bias checks before the series of measurements and by conducting system bias and calibration drift checks after the measurements, in accordance with the procedures of Methods 6C, 7E, and 3A.

(c) Measure for a minimum of 2 minutes at each traverse point. To the extent practicable, complete the traverse within a 2-hour period.

(d) If the load has remained constant (±3.0 percent) during the traverse and if the reference method analyzers have passed all of the required quality assurance checks, proceed with the data analysis.

(e) Calculate the average NO_X, SO_2, and CO_2 (or O_2) concentrations at each of the individual traverse points. Then, calculate the arithmetic average NO_X, SO_2, and CO_2 (or O_2) concentrations for all traverse points.

6.5.6.2 Alternative (Abbreviated) Stratification Test

(a) With the unit(s) operating under steady-state conditions at normal load, as defined in section 6.5.2.1 of this appendix, use a traversing gas sampling probe to measure the pollutant (SO_2 or NO_X) and diluent (CO_2 or O_2) concentrations at three points. The points shall be located according to the specifications for the long measurement line in section 3.2 of PS No. 2 (i.e., locate the points 16.7 percent, 50.0 percent, and 83.3 percent of the way across the stack). Alternatively, the concentration measurements may be made at six traverse points along a diameter. The six points shall be located in accordance with Method 1 in appendix A to part 60 of this chapter.

(b) Use Methods 6C, 7E, and 3A in appendix A to part 60 of this chapter to make the measurements. Data from the reference method analyzers must be quality assured by performing analyzer calibration error and system bias checks before the series of measurements and by conducting system bias and calibration drift checks after the measurements, in accordance with the procedures of Methods 6C, 7E, and 3A.

(c) Measure for a minimum of 2 minutes at each traverse point. To the extent practicable, complete the traverse within a 1-hour period.

(d) If the load has remained constant (±3.0 percent) during the traverse and if the reference method analyzers have passed all of the required quality assurance checks, proceed with the data analysis.

(e) Calculate the average NO_X, SO_2, and CO_2 (or O_2) concentrations at each of the individual traverse points. Then, calculate the arithmetic average NO_X, SO_2, and CO_2 (or O_2) concentrations for all traverse points.

6.5.6.3 Stratification Test Results and Acceptance Criteria

(a) For each pollutant or diluent gas, the short reference method measurement line described in section 3.2 of PS No. 2 may be used in lieu of the long measurement line prescribed in section 3.2 of PS No. 2 if the results of a stratification test, conducted in accordance with section 6.5.6.1 or 6.5.6.2 of this appendix (as appropriate; see section 6.5.6(b)(3) of this appendix), show that the concentration at each individual traverse point differs by no more than ±10.0 percent from the arithmetic average concentration for all traverse points. The results are also acceptable if the concentration at each individual traverse point differs by no more than ± 5ppm or ±0.5 percent CO_2 (or O_2) from the arithmetic average concentration for all traverse points.

(b) For each pollutant or diluent gas, a single reference method measurement point, located at least 1.0 meter from the stack wall and situated along one of the measurement lines used for the stratification test, may be used for that pollutant or diluent gas if the results of a stratification test, conducted in accordance with section 6.5.6.1 of this appendix, show that the concentration at each individual traverse point differs by no more than ±5.0 percent from the arithmetic average concentration for all traverse points. The results are also acceptable if the concentration at each individual traverse point differs by no more than ±3 ppm or ±0.3 percent CO_2 (or O_2) from the arithmetic average concentration for all traverse points.

(c) The owner or operator shall keep the results of all stratification tests on-site, in a format suitable for inspection, as part of the supplementary RATA records required under § 75.56(a)(7) or § 75.59(a)(7), as applicable.

6.5.7 Sampling Strategy

(a) Conduct the reference method tests so they will yield results representative of the pollutant concentration, emission rate, moisture, temperature, and flue gas flow rate from the unit and can be correlated with the pollutant concentration monitor, CO_2 or O_2 monitor, flow monitor, and SO_2 or NO_X continuous emission monitoring system measurements. The minimum acceptable time for a gas monitoring system RATA run or for a moisture monitoring system RATA run is 21 minutes. For each run of a gas monitoring system RATA, all necessary pollutant concentration measurements, diluent concentration measurements, and moisture measurements (if applicable) must, to the extent practicable, be made within a 60-minute period. For NO_X-diluent or SO_2-diluent monitoring system RATAs, the pollutant and diluent concentration measurements must be made simultaneously. For flow monitor RATAs, the minimum time per run shall be 5 minutes. Flow rate reference method measurements may be made either sequentially from port to port or simultaneously at two or more sample ports. The velocity measurement probe may be moved from traverse point to traverse point either manually or automatically. If, during a flow RATA, significant pulsations in the reference method readings are observed, be sure to allow enough measurement time at each traverse point to obtain an accurate average reading when a manual readout method is used (e.g., a ''sight-weighted'' average from a manometer). A minimum of one set of auxiliary measurements for stack gas molecular weight determination (i.e., diluent gas data and moisture data) is required for every clock hour of a flow RATA or for every three test runs (whichever is less restrictive). Successive flow RATA runs may be performed without waiting in-between runs. If an O_2-diluent monitor is used as a CO_2 continuous emission monitoring system, perform a CO_2 system RATA (i.e., measure CO_2, rather than O_2, with the reference method). For moisture monitoring systems, an appropriate coefficient, ''K'' factor or other suitable mathematical algorithm may be developed prior to the RATA, to adjust the monitoring system readings with respect to the reference method. If such a coefficient, K-factor or algorithm is developed, it shall be applied to the CEMS readings during the RATA and (if the RATA is passed), to the subsequent CEMS data, by means of the automated data acquisition and handling system. The owner or operator shall keep records of the current coefficient, K factor or algorithm, as specified in §§ 75.56(a)(5)(ix) and 75.59(a)(5)(vii). Whenever the coefficient, K factor or algorithm is changed, a RATA of the moisture monitoring system is required.

(b) To properly correlate individual SO_2 or NO_X continuous emission monitoring system data (in lb/mmBtu) and volumetric flow rate data with the reference method data, annotate the beginning and end of each reference method test run (including the exact time of day) on the individual chart recorder(s) or other permanent recording device(s).

* * * * *

6.5.9 Number of Reference Method Tests

Perform a minimum of nine sets of paired monitor (or monitoring system) and reference method test data for every required (i.e., certification, recertification, diagnostic, semiannual, or annual) relative accuracy test audit. For 2-level and 3-level relative accuracy test audits of flow monitors, perform a minimum of nine sets at each of the operating levels.

Note: The tester may choose to perform more than nine sets of reference method tests. If this option is chosen, the tester may reject a maximum of three sets of the test results, as long as the total number of test results used to determine the relative accuracy or bias is greater than or equal to nine. Report all data, including the rejected CEMS data and corresponding reference method test results.

6.5.10 Reference Methods

The following methods from appendix A to part 60 of this chapter or their approved alternatives are the reference methods for performing relative accuracy test audits: Method 1 or 1A for siting; Method 2 or its

allowable alternatives in appendix A to part 60 of this chapter (except for Methods 2B and 2E) for stack gas velocity and volumetric flow rate; Methods 3, 3A, or 3B for O_2 or CO_2; Method 4 for moisture; Methods 6, 6A, or 6C for SO_2; Methods 7, 7A, 7C, 7D or 7E for NO_X, excluding the exception in section 5.1.2 of Method 7E. When using Method 7E for measuring NO_X concentration, total NO_X, both NO and NO_2, must be measured.

59. Appendix A to part 75 is amended by revising in sections 7.2.1, and 7.2.2, the text following each section's equation, beginning with the word ''where''; by revising sections 7.6, 7.6.4, and 7.6.5 and by adding new sections 7.7 and 7.8 (without revising the Figures for Appendix A that appear at the end of section 7 to Appendix A) to read as follows:

7. Calculations

* * * * *

7.2.1 Pollutant Concentration and Diluent Monitors

* * * * *

Where:

CE = Calibration error as a percentage of the span of the instrument.

R = Reference value of zero or upscale (high-level or mid-level, as applicable) calibration gas introduced into the monitoring system.

A = Actual monitoring system response to the calibration gas.

S = Span of the instrument, as specified in section 2 of this appendix.

7.2.2 Flow Monitor Calibration Error

* * * * *

Where:

CE = Calibration error as a percentage of span.

R = Low or high level reference value specified in section 2.2.2.1 of this appendix.

A = Actual flow monitor response to the reference value.

S = Flow monitor calibration span value as determined under section 2.1.4.2 of this appendix.

* * * * *

7.6 Bias Test and Adjustment Factor

Test the following relative accuracy test audit data sets for bias: SO_2 pollutant concentration monitors; flow monitors; NO_X concentration monitoring systems used to determine NO_X mass emissions, as defined in § 75.71(a)(2); and NO_X-diluent continuous emission monitoring systems, using the procedures outlined in section 7.6.1 through 7.6.5 of this appendix. For multiple-load flow RATAs, perform a bias test at each load level designated as normal under section 6.5.2.1 of this appendix.

* * * * *

7.6.4 Bias Test

If, for the relative accuracy test audit data set being tested, the mean difference, $\bar{d}$, is less than or equal to the absolute value of the confidence coefficient, $|cc|$, the monitor or monitoring system has passed the bias test. If the mean difference, d, is greater than the absolute value of the confidence coefficient, $|cc|$, the monitor or monitoring system has failed to meet the bias test requirement.

7.6.5 Bias Adjustment

(a) If the monitor or monitoring system fails to meet the bias test requirement, adjust the value obtained from the monitor using the following equation:

$$CEM_i^{Adjusted} = CEM_i^{Monitor} \times BAF \qquad \text{(Eq. A-11)}$$

Where:

CEM_i Monitor = Data (measurement) provided by the monitor at time i.

CEM_i Adjusted = Data value, adjusted for bias, at time i.

BAF = Bias adjustment factor, defined by:

$$BAF = 1 + \frac{|\bar{d}|}{CEM_{avg}} \qquad \text{(Eq. A-12)}$$

Where:

BAF = Bias adjustment factor, calculated to the nearest thousandth.

$\bar{d}$ = Arithmetic mean of the difference obtained during the failed bias test using Equation A–7.

CEM_{avg} = Mean of the data values provided by the monitor during the failed bias test.

(b) For single-load RATAs of SO_2 pollutant concentration monitors, NO_X concentration monitoring systems, and NO_X-diluent monitoring systems and for the single-load flow RATAs required or allowed under section 6.5.2 of this appendix and sections 2.3.1.3(b) and 2.3.1.3(c) of appendix B to this part, the appropriate BAF is determined directly from the RATA results at normal load, using Equation A–12. Notwithstanding, when a NO_X concentration CEMS or an SO_2 CEMS or a NO_X-diluent CEMS installed on a low-emitting affected unit (i.e., average SO_2 or NO_X concentration during the RATA ± 250 ppm or average NO_X emission rate ± 0.200 lb/mmBtu) meets the normal 10.0 percent relative accuracy specification (as calculated using Equation A–10) or the alternate relative accuracy specification in section 3.3 of this appendix for low-emitters, but fails the bias test, the BAF may either be determined using Equation A–12, or a default BAF of 1.111 may be used.

(c) For 2-load or 3-load flow RATAs, when only one load level (low, mid or high) has been designated as normal under section 6.5.2.1 of this appendix and the bias test is passed at the normal load level, apply a BAF of 1.000 to the subsequent flow rate data. If the bias test is failed at the normal load level, use Equation A–12 to calculate the normal load BAF and then perform an additional bias test at the second most frequently-used load level, as determined under section 6.5.2.1 of this appendix. If the bias test is passed at this second load level, apply the normal load BAF to the subsequent flow rate data. If the bias test is failed at this second load level, use Equation A–12 to calculate the BAF at the second load level and apply the higher of the two BAFs (either from the normal load level or from the second load level) to the subsequent flow rate data.

(d) For 2-load or 3-load flow RATAs, when two load levels have been designated as normal under section 6.5.2.1 of this appendix and the bias test is passed at both normal load levels, apply a BAF of 1.000 to the subsequent flow rate data. If the bias test is failed at one of the normal load levels but not at the other, use Equation A–12 to calculate the BAF for the normal load level at which the bias test was failed and apply that BAF to the subsequent flow rate data. If the bias test is failed at both designated normal load levels, use Equation A–12 to calculate the BAF at each normal load level and apply the higher of the two BAFs to the subsequent flow rate data.

(e) Each time a RATA is passed and the appropriate bias adjustment factor has been determined, apply the BAF prospectively to all monitoring system data, beginning with the first clock hour following the hour in which the RATA was completed. For a 2-load flow RATA, the ''hour in which the RATA was completed'' refers to the hour in which the testing at both loads was completed; for a 3-load RATA, it refers to the hour in which the testing at all three loads was completed.

(f) Use the bias-adjusted values in computing substitution values in the missing data procedure, as specified in subpart D of this part, and in reporting the concentration of SO_2, the flow rate, the average NO_X emission rate, the unit heat input, and the calculated mass emissions of SO_2 and CO_2 during the quarter and calendar year, as specified in subpart G of this part. In addition, when using a NO_X concentration monitoring system and a flow monitor to calculate NO_X mass emissions under subpart H of this part, use bias-adjusted values for NO_X concentration and flow rate in the mass emission calculations and use bias-adjusted NO_X concentrations to compute the appropriate substitution values for NO_X concentration in the missing data routines under subpart D of this part.

* * * * *

7.7 Reference Flow-to-Load Ratio or Gross Heat Rate

(a) Except as provided in section 7.8 of this appendix, the owner or operator shall determine R_{ref}, the reference value of the ratio of flow rate to unit load, each time that a passing flow RATA is performed at a load level designated as normal in section 6.5.2.1 of this appendix. The owner or operator shall report the current value of R_{ref} in the electronic quarterly report required under § 75.64 and shall also report the completion date of the associated RATA. If two load levels have been designated as normal under

section 6.5.2.1 of this appendix, the owner or operator shall determine a separate R_{ref} value for each of the normal load levels. The requirements of this section shall become effective as of April 1, 2000. The reference flow-to-load ratio shall be calculated as follows:

$$R_{ref} = \frac{Q_{ref}}{L_{avg}} \times 10^{-5} \qquad \text{(Eq. A-13)}$$

Where:

R_{ref} = Reference value of the flow-to-load ratio, from the most recent normal-load flow RATA, scfh/megawatts or scfh/1000 lb/hr of steam.

Q_{ref} = Average stack gas volumetric flow rate measured by the reference method during the normal-load RATA, scfh.

L_{avg} = Average unit load during the normal-load flow RATA, megawatts or 1000 lb/hr of steam.

(b) In Equation A–13, for a common stack, L_{avg} shall be the sum of the operating loads of all units that discharge through the stack. For a unit that discharges its emissions through multiple stacks (except for a discharge configuration consisting of a main stack and a bypass stack), Q_{ref} will be the sum of the total volumetric flow rates that discharge through all of the stacks. For a unit with a multiple stack discharge configuration consisting of a main stack and a bypass stack (e.g., a unit with a wet SO_2 scrubber), determine Q_{ref} separately for each stack at the time of the normal load flow RATA. Round off the value of R_{ref} to two decimal places.

(c) In addition to determining R_{ref} or as an alternative to determining R_{ref}, a reference value of the gross heat rate (GHR) may be determined. In order to use this option, quality assured diluent gas (CO_2 or O_2) must be available for each hour of the most recent normal-load flow RATA. The reference value of the GHR shall be determined as follows:

$$(GHR)_{ref} = \frac{(\text{Heat Input})_{avg}}{L_{avg}} \times 1000 \qquad \text{(Eq. A-13a)}$$

Where:

$(GHR)_{ref}$ = Reference value of the gross heat rate at the time of the most recent normal-load flow RATA, Btu/kwh or Btu/lb steam load.

$(\text{Heat Input})_{avg}$ = Average hourly heat input during the normal-load flow RATA, as determined using the applicable equation in appendix F to this part, mmBtu/hr.

L_{avg} = Average unit load during the normal-load flow RATA, megawatts or 1000 lb/hr of steam.

(d) In the calculation of $(\text{Heat Input})_{avg}$, use Q_{ref}, the average volumetric flow rate measured by the reference method during the RATA, and use the average diluent gas concentration measured during the flow RATA.

7.8 Flow-to-Load Test Exemptions

The requirements of this section apply beginning on April 1, 2000. For complex stack configurations (e.g., when the effluent from a unit is divided and discharges through multiple stacks in such a manner that the flow rate in the individual stacks cannot be correlated with unit load), the owner or operator may petition the Administrator under § 75.66 for an exemption from the requirements of section 7.7 of this appendix. The petition must include sufficient information and data to demonstrate that a flow-to-load or gross heat rate evaluation is infeasible for the complex stack configuration.

Appendix B to Part 75—Quality Assurance and Quality Control Procedures

60. Appendix B to part 75 is amended by revising sections 1 and 1.1; adding sections 1.1.1 through 1.1.3; revising section 1.2; adding sections 1.2.1 through 1.2.4; revising section 1.3; adding sections 1.3.1 through 1.3.6; revising section 1.4; adding sections 1.4.1 through 1.4.3; and removing sections 1.5 and 1.6 to read as follows:

1. Quality Assurance/Quality Control Program

Develop and implement a quality assurance/quality control (QA/QC) program for the continuous emission monitoring systems, excepted monitoring systems approved under appendix D or E to this part, and alternative monitoring systems under subpart E of this part, and their components. At a minimum, include in each QA/QC program a written plan that describes in detail (or that refers to separate documents containing) complete, step-by-step procedures and operations for each of the following activities. Upon request from regulatory authorities, the source shall make all procedures, maintenance records, and ancillary supporting documentation from the manufacturer (e.g., software coefficients and troubleshooting diagrams) available for review during an audit.

1.1 Requirements for All Monitoring Systems

1.1.1 Preventive Maintenance

Keep a written record of procedures needed to maintain the monitoring system in proper operating condition and a schedule for those procedures. This shall, at a minimum, include procedures specified by the manufacturers of the equipment and, if applicable, additional or alternate procedures developed for the equipment.

1.1.2 Recordkeeping and Reporting

Keep a written record describing procedures that will be used to implement the recordkeeping and reporting requirements in subparts E, F, and G and appendices D and E to this part, as applicable.

1.1.3 Maintenance Records

Keep a record of all testing, maintenance, or repair activities performed on any monitoring system or component in a location and format suitable for inspection. A maintenance log may be used for this purpose. The following records should be maintained: date, time, and description of any testing, adjustment, repair, replacement, or preventive maintenance action performed on any monitoring system and records of any corrective actions associated with a monitor's outage period. Additionally, any adjustment that recharacterizes a system's ability to record and report emissions data must be recorded (e.g., changing of flow monitor or moisture monitoring system polynomial coefficients, K factors or mathematical algorithms, changing of temperature and pressure coefficients and dilution ratio settings), and a written explanation of the procedures used to make the adjustment(s) shall be kept.

1.2 Specific Requirements for Continuous Emissions Monitoring Systems

1.2.1 Calibration Error Test and Linearity Check Procedures

Keep a written record of the procedures used for daily calibration error tests and linearity checks (e.g., how gases are to be injected, adjustments of flow rates and pressure, introduction of reference values, length of time for injection of calibration gases, steps for obtaining calibration error or error in linearity, determination of interferences, and when calibration adjustments should be made). Identify any calibration error test and linearity check procedures specific to the continuous emission monitoring system that vary from the procedures in appendix A to this part.

1.2.2 Calibration and Linearity Adjustments

Explain how each component of the continuous emission monitoring system will be adjusted to provide correct responses to calibration gases, reference values, and/or indications of interference both initially and after repairs or corrective action. Identify equations, conversion factors and other factors affecting calibration of each continuous emission monitoring system.

1.2.3 Relative Accuracy Test Audit Procedures

Keep a written record of procedures and details peculiar to the installed continuous emission monitoring systems that are to be used for relative accuracy test audits, such as sampling and analysis methods.

1.2.4 Parametric Monitoring for Units With Add-on Emission Controls

The owner or operator shall keep a written (or electronic) record including a list of operating parameters for the add-on SO_2 or NO_X emission controls, including parameters in § 75.55(b) or § 75.58(b), as applicable, and the range of each operating parameter that

indicates the add-on emission controls are operating properly. The owner or operator shall keep a written (or electronic) record of the parametric monitoring data during each SO_X or NO_2 missing data period.

1.3 Specific Requirements for Excepted Systems Approved Under Appendices D and E

1.3.1 Fuel Flowmeter Accuracy Test Procedures

Keep a written record of the specific fuel flowmeter accuracy test procedures. These may include: standard methods or specifications listed in and section 2.1.5.1 of appendix D to this part and incorporated by reference under § 75.6; the procedures of sections 2.1.5.2 or 2.1.7 of appendix D to this part; or other methods approved by the Administrator through the petition process of § 75.66(c).

1.3.2 Transducer or Transmitter Accuracy Test Procedures

Keep a written record of the procedures for testing the accuracy of transducers or transmitters of an orifice-, nozzle-, or venturi-type fuel flowmeter under section 2.1.6 of appendix D to this part. These procedures should include a description of equipment used, steps in testing, and frequency of testing.

1.3.3 Fuel Flowmeter, Transducer, or Transmitter Calibration and Maintenance Records

Keep a record of adjustments, maintenance, or repairs performed on the fuel flowmeter monitoring system. Keep records of the data and results for fuel flowmeter accuracy tests and transducer accuracy tests, consistent with appendix D to this part.

1.3.4 Primary Element Inspection Procedures

Keep a written record of the standard operating procedures for inspection of the primary element (i.e., orifice, venturi, or nozzle) of an orifice-, venturi-, or nozzle-type fuel flowmeter. Examples of the types of information to be included are: what to examine on the primary element; how to identify if there is corrosion sufficient to affect the accuracy of the primary element; and what inspection tools (e.g., baroscope), if any, are used.

1.3.5 Fuel Sampling Method and Sample Retention

Keep a written record of the standard procedures used to perform fuel sampling, either by utility personnel or by fuel supply company personnel. These procedures should specify the portion of the ASTM method used, as incorporated by reference under § 75.6, or other methods approved by the Administrator through the petition process of § 75.66(c). These procedures should describe safeguards for ensuring the availability of an oil sample (e.g., procedure and location for splitting samples, procedure for maintaining sample splits on site, and procedure for transmitting samples to an analytical laboratory). These procedures should identify the ASTM analytical methods used to analyze sulfur content, gross calorific value, and density, as incorporated by reference under § 75.6, or other methods approved by the Administrator through the petition process of § 75.66(c).

1.3.6 Appendix E Monitoring System Quality Assurance Information

Identify the unit manufacturer's recommended range of quality assurance- and quality control-related operating parameters. Keep records of these operating parameters for each hour of unit operation (i.e., fuel combustion). Keep a written record of the procedures used to perform NO_X emission rate testing. Keep a copy of all data and results from the initial and from the most recent NO_X emission rate testing, including the values of quality assurance parameters specified in section 2.3 of appendix E to this part.

1.4 Requirements for Alternative Systems Approved Under Subpart E

1.4.1 Daily Quality Assurance Tests

Explain how the daily assessment procedures specific to the alternative monitoring system are to be performed.

1.4.2 Daily Quality Assurance Test Adjustments

Explain how each component of the alternative monitoring system will be adjusted in response to the results of the daily assessments.

1.4.3 Relative Accuracy Test Audit Procedures

Keep a written record of procedures and details peculiar to the installed alternative monitoring system that are to be used for relative accuracy test audits, such as sampling and analysis methods.

61. Appendix B to part 75 is amended by:

a. Revising the first paragraph of section 2.1.1, revising sections 2.1.3 and 2.1.4; revising paragraph (1) of section 2.1.5.1; revising sections 2.2 through 2.2.3; adding sections 2.2.4 through 2.2.5.3; revising sections 2.3 and 2.3.1; adding sections 2.3.1.1 through 2.3.1.4; revising sections 2.3.2 and 2.3.3; and adding section 2.3.4;

b. Redesignating existing section 2.4 as section 2.5;

c. Adding new section 2.4; and

d. Revising Figures 1 and 2 at the end of appendix B to read as follows:

2. Frequency of Testing

* * * * *

2.1 * * *

2.1.1 Calibration Error Test

Except as provided in section 2.1.1.2 of this appendix, perform the daily calibration error test of each gas monitoring system (including moisture monitoring systems consisting of wet- and dry-basis O_2 analyzers) according to the procedures in section 6.3.1 of appendix A to this part, and perform the daily calibration error test of each flow monitoring system according to the procedure in section 6.3.2 of appendix A to this part.

* * * * *

2.1.3 Additional Calibration Error Tests and Calibration Adjustments

(a) In addition to the daily calibration error tests required under section 2.1.1 of this appendix, a calibration error test of a monitor shall be performed in accordance with section 2.1.1 of this appendix, as follows: whenever a daily calibration error test is failed; whenever a monitoring system is returned to service following repair or corrective maintenance that could affect the monitor's ability to accurately measure and record emissions data; or after making certain calibration adjustments, as described in this section. Except in the case of the routine calibration adjustments described in this section, data from the monitor are considered invalid until the required additional calibration error test has been successfully completed.

(b) Routine calibration adjustments of a monitor are permitted after any successful calibration error test. These routine adjustments shall be made so as to bring the monitor readings as close as practicable to the known tag values of the calibration gases or to the actual value of the flow monitor reference signals. An additional calibration error test is required following routine calibration adjustments where the monitor's calibration has been physically adjusted (e.g., by turning a potentiometer) to verify that the adjustments have been made properly. An additional calibration error test is not required, however, if the routine calibration adjustments are made by means of a mathematical algorithm programmed into the data acquisition and handling system. The EPA recommends that routine calibration adjustments be made, at a minimum, whenever the daily calibration error exceeds the limits of the applicable performance specification in appendix A to this part for the pollutant concentration monitor, CO_2 or O_2 monitor, or flow monitor.

(c) Additional (non-routine) calibration adjustments of a monitor are permitted prior to (but not during) linearity checks and RATAs and at other times, provided that an appropriate technical justification is included in the quality control program required under section 1 of this appendix. The allowable non-routine adjustments are as follows. The owner or operator may physically adjust the calibration of a monitor (e.g., by means of a potentiometer), provided that the post-adjustment zero and upscale responses of the monitor are within the performance specifications of the instrument given in section 3.1 of appendix A to this part. An additional calibration error test is required following such adjustments to verify that the monitor is operating within the performance specifications at both the zero and upscale calibration levels.

2.1.4 Data Validation

(a) An out-of-control period occurs when the calibration error of an SO_2 or NO_X pollutant concentration monitor exceeds 5.0 percent of the span value (or exceeds 10 ppm, for span values <200 ppm), when the calibration error of a CO_2 or O_2 monitor (including O_2 monitors used to measure CO_2 emissions or percent moisture) exceeds 1.0 percent O_2 or CO_2, or when the calibration

error of a flow monitor or a moisture sensor exceeds 6.0 percent of the span value, which is twice the applicable specification of appendix A to this part. Notwithstanding, a differential pressure-type flow monitor for which the calibration error exceeds 6.0 percent of the span value shall not be considered out-of-control if $|R - A|$, the absolute value of the difference between the monitor response and the reference value in Equation A–6, is ≤0.02 inches of water. The out-of-control period begins upon failure of the calibration error test and ends upon completion of a successful calibration error test. Note, that if a failed calibration, corrective action, and successful calibration error test occur within the same hour, emission data for that hour recorded by the monitor after the successful calibration error test may be used for reporting purposes, provided that two or more valid readings are obtained as required by § 75.10. A NO_X-diluent continuous emission monitoring system is considered out-of-control if the calibration error of either component monitor exceeds twice the applicable performance specification in appendix A to this part. Emission data shall not be reported from an out-of-control monitor.

(b) An out-of-control period also occurs whenever interference of a flow monitor is identified. The out-of-control period begins with the hour of completion of the failed interference check and ends with the hour of completion of an interference check that is passed.

2.1.5 * * *

2.1.5.1 * * *

(1) Data from a monitoring system are invalid, beginning with the first hour following the expiration of a 26-hour data validation period or beginning with the first hour following the expiration of an 8-hour start-up grace period (as provided under section 2.1.5.2 of this appendix), if the required subsequent daily assessment has not been conducted.

* * * * *

2.2 Quarterly Assessments

For each primary and redundant backup monitor or monitoring system, perform the following quarterly assessments. This requirement is applies as of the calendar quarter following the calendar quarter in which the monitor or continuous emission monitoring system is provisionally certified.

2.2.1 Linearity Check

Perform a linearity check, in accordance with the procedures in section 6.2 of appendix A to this part, for each primary and redundant backup SO_2 and NO_X pollutant concentration monitor and each primary and redundant backup CO_2 or O_2 monitor (including O_2 monitors used to measure CO_2 emissions or to continuously monitor moisture) at least once during each QA operating quarter, as defined in § 72.2 of this chapter. For units using both a low and high span value, a linearity check is required only on the range(s) used to record and report emission data during the QA operating quarter. Conduct the linearity checks no less than 30 days apart, to the extent practicable. The data validation procedures in section 2.2.3(e) of this appendix shall be followed.

2.2.2 Leak Check

For differential pressure flow monitors, perform a leak check of all sample lines (a manual check is acceptable) at least once during each QA operating quarter. For this test, the unit does not have to be in operation. Conduct the leak checks no less than 30 days apart, to the extent practicable. If a leak check is failed, follow the applicable data validation procedures in section 2.2.3(f) of this appendix.

2.2.3 Data Validation

(a) A linearity check shall not be commenced if the monitoring system is operating out-of-control with respect to any of the daily or semiannual quality assurance assessments required by sections 2.1 and 2.3 of this appendix or with respect to the additional calibration error test requirements in section 2.1.3 of this appendix.

(b) Each required linearity check shall be done according to paragraph (b)(1), (b)(2) or (b)(3) of this section:

(1) The linearity check may be done ''cold,'' i.e., with no corrective maintenance, repair, calibration adjustments, re-linearization or reprogramming of the monitor prior to the test.

(2) The linearity check may be done after performing only the routine or non-routine calibration adjustments described in section 2.1.3 of this appendix at the various calibration gas levels (zero, low, mid or high), but no other corrective maintenance, repair, re-linearization or reprogramming of the monitor. Trial gas injection runs may be performed after the calibration adjustments and additional adjustments within the allowable limits in section 2.1.3 of this appendix may be made prior to the linearity check, as necessary, to optimize the performance of the monitor. The trial gas injections need not be reported, provided that they meet the specification for trial gas injections in § 75.20(b)(3)(vii)(E)(*1*). However, if, for any trial injection, the specification in § 75.20(b)(3)(vii)(E)(*1*) is not met, the trial injection shall be counted as an aborted linearity check.

(3) The linearity check may be done after repair, corrective maintenance or reprogramming of the monitor. In this case, the monitor shall be considered out-of-control from the hour in which the repair, corrective maintenance or reprogramming is commenced until the linearity check has been passed. Alternatively, the data validation procedures and associated timelines in §§ 75.20(b)(3)(ii) through (ix) may be followed upon completion of the necessary repair, corrective maintenance, or reprogramming. If the procedures in § 75.20(b)(3) are used, the words ''quality assurance'' apply instead of the word ''recertification''.

(c) Once a linearity check has been commenced, the test shall be done hands-off. That is, no adjustments of the monitor are permitted during the linearity test period, other than the routine calibration adjustments following daily calibration error tests, as described in section 2.1.3 of this appendix.

(d) If a daily calibration error test is failed during a linearity test period, prior to completing the test, the linearity test must be repeated. Data from the monitor are invalidated prospectively from the hour of the failed calibration error test until the hour of completion of a subsequent successful calibration error test. The linearity test shall not be commenced until the monitor has successfully completed a calibration error test.

(e) An out-of-control period occurs when a linearity test is failed (i.e., when the error in linearity at any of the three concentrations in the quarterly linearity check (or any of the six concentrations, when both ranges of a single analyzer with a dual range are tested) exceeds the applicable specification in section 3.2 of appendix A to this part) or when a linearity test is aborted due to a problem with the monitor or monitoring system. For a NO_X-diluent or SO_2-diluent continuous emission monitoring system, the system is considered out-of-control if either of the component monitors exceeds the applicable specification in section 3.2 of appendix A to this part or if the linearity test of either component is aborted due to a problem with the monitor. The out-of-control period begins with the hour of the failed or aborted linearity check and ends with the hour of completion of a satisfactory linearity check following corrective action and/or monitor repair, unless the option in paragraph (b)(3) of this section to use the data validation procedures and associated timelines in § 75.20(b)(3)(ii) through (ix) has been selected, in which case the beginning and end of the out-of-control period shall be determined in accordance with §§ 75.20(b)(3)(vii)(A) and (B). Note that a monitor shall not be considered out-of-control when a linearity test is aborted for a reason unrelated to the monitor's performance (e.g., a forced unit outage).

(f) No more than four successive calendar quarters shall elapse after the quarter in which a linearity check of a monitor or monitoring system (or range of a monitor or monitoring system) was last performed without a subsequent linearity test having been conducted. If a linearity test has not been completed by the end of the fourth calendar quarter since the last linearity test, then the linearity test must be completed within a 168 unit operating hour or stack operating hour ''grace period'' (as provided in section 2.2.4 of this appendix) following the end of the fourth successive elapsed calendar quarter, or data from the CEMS (or range) will become invalid.

(g) An out-of-control period also occurs when a flow monitor sample line leak is detected. The out-of-control period begins with the hour of the failed leak check and ends with the hour of a satisfactory leak check following corrective action.

(h) For each monitoring system, report the results of all completed and partial linearity tests that affect data validation (i.e., all completed, passed linearity checks; all completed, failed linearity checks; and all linearity checks aborted due to a problem with the monitor, including trial gas injections counted as failed test attempts under paragraph (b)(2) of this section or

under § 75.20(b)(3)(vii)(F)), in the quarterly report required under § 75.64. Note that linearity attempts which are aborted or invalidated due to problems with the reference calibration gases or due to operational problems with the affected unit(s) need not be reported. Such partial tests do not affect the validation status of emission data recorded by the monitor. A record of all linearity tests, trial gas injections and test attempts (whether reported or not) must be kept on-site as part of the official test log for each monitoring system.

2.2.4 Linearity and Leak Check Grace Period

(a) When a required linearity test or flow monitor leak check has not been completed by the end of the QA operating quarter in which it is due or if, due to infrequent operation of a unit or infrequent use of a required high range of a monitor or monitoring system, four successive calendar quarters have elapsed after the quarter in which a linearity check of a monitor or monitoring system (or range) was last performed without a subsequent linearity test having been done, the owner or operator has a grace period of 168 consecutive unit operating hours, as defined in § 72.2 of this chapter (or, for monitors installed on common stacks or bypass stacks, 168 consecutive stack operating hours, as defined in § 72.2 of this chapter) in which to perform a linearity test or leak check of that monitor or monitoring system (or range). The grace period begins with the first unit or stack operating hour following the calendar quarter in which the linearity test was due. Data validation during a linearity or leak check grace period shall be done in accordance with the applicable provisions in section 2.2.3 of this appendix.

(b) If, at the end of the 168 unit (or stack) operating hour grace period, the required linearity test or leak check has not been completed, data from the monitoring system (or range) shall be invalid, beginning with the hour following the expiration of the grace period. Data from the monitoring system (or range) remain invalid until the hour of completion of a subsequent successful hands-off linearity test or leak check of the monitor or monitoring system (or range). Note that when a linearity test or a leak check is conducted within a grace period for the purpose of satisfying the linearity test or leak check requirement from a previous QA operating quarter, the results of that linearity test or leak check may only be used to meet the linearity check or leak check requirement of the previous quarter, not the quarter in which the missed linearity test or leak check is completed.

2.2.5 Flow-to-Load Ratio or Gross Heat Rate Evaluation

(a) *Applicability and methodology.* The provisions of this section apply beginning on April 1, 2000. Unless exempted by an approved petition in accordance with section 7.8 of appendix A to this part, the owner or operator shall, for each flow rate monitoring system installed on each unit, common stack or multiple stack, evaluate the flow-to-load ratio quarterly, i.e., for each QA operating quarter (as defined in § 72.2 of this chapter). At the end of each QA operating quarter, the owner or operator shall use Equation B–1 to calculate the flow-to-load ratio for every hour during the quarter in which: the unit (or combination of units, for a common stack) operated within ±10.0 percent of L_{avg}, the average load during the most recent normal-load flow RATA; and a quality assured hourly average flow rate was obtained with a certified flow rate monitor.

$$R_h = \frac{Q_h}{L_h} \times 10^{-5} \qquad \text{(Eq. B-1)}$$

Where:

R_h = Hourly value of the flow-to-load ratio, scfh/megawatts or scfh/1000 lb/hr of steam load.

Q_h = Hourly stack gas volumetric flow rate, as measured by the flow rate monitor, scfh.

L_h = Hourly unit load, megawatts or 1000 lb/hr of steam; must be within ±10.0 percent of L_{avg} during the most recent normal-load flow RATA.

(1) In Equation B–1, the owner or operator may use either bias-adjusted flow rates or unadjusted flow rates, provided that all of the ratios are calculated the same way. For a common stack, L_h shall be the sum of the hourly operating loads of all units that discharge through the stack. For a unit that discharges its emissions through multiple stacks (except when one of the stacks is a bypass stack) or that monitors its emissions in multiple breechings, Q_h will be the combined hourly volumetric flow rate for all of the stacks or ducts. For a unit with a multiple stack discharge configuration consisting of a main stack and a bypass stack, each of which has a certified flow monitor (e.g., a unit with a wet SO_2 scrubber), calculate the hourly flow-to-load ratios separately for each stack. Round off each value of R_h to two decimal places.

(2) Alternatively, the owner or operator may calculate the hourly gross heat rates (GHR) in lieu of the hourly flow-to-load ratios. The hourly GHR shall be determined only for those hours in which quality assured flow rate data and diluent gas (CO_2 or O_2) concentration data are both available from a certified monitor or monitoring system or reference method. If this option is selected, calculate each hourly GHR value as follows:

$$(GHR)_h = \frac{(\text{Heat Input})_h}{L_h} \times 1000 \qquad \text{(Eq. B-1a)}$$

where:

$(GHR)_h$ = Hourly value of the gross heat rate, Btu/kwh or Btu/lb steam load.

$(\text{Heat Input})_h$ = Hourly heat input, as determined from the quality assured flow rate and diluent data, using the applicable equation in appendix F to this part, mmBtu/hr.

L_h = Hourly unit load, megawatts or 1000 lb/hr of steam; must be within ± 10.0 percent of L_{avg} during the most recent normal-load flow RATA.

(3) In Equation B–1a, the owner or operator may either use bias-adjusted flow rates or unadjusted flow rates in the calculation of $(\text{Heat Input})_h$, provided that all of the heat input values are determined in the same manner.

(4) The owner or operator shall evaluate the calculated hourly flow-to-load ratios (or gross heat rates) as follows. A separate data analysis shall be performed for each primary and each redundant backup flow rate monitor used to record and report data during the quarter. Each analysis shall be based on a minimum of 168 recorded hourly average flow rates. When two RATA load levels are designated as normal, the analysis shall be performed at the higher load level, unless there are fewer than 168 data points available at that load level, in which case the analysis shall be performed at the lower load level. If, for a particular flow monitor, fewer than 168 hourly flow-to-load ratios (or GHR values) are available at any of the load levels designated as normal, a flow-to-load (or GHR) evaluation is not required for that monitor for that calendar quarter.

(5) For each flow monitor, use Equation B–2 in this appendix to calculate E_h, the absolute percentage difference between each hourly R_h value and R_{ref}, the reference value of the flow-to-load ratio, as determined in accordance with section 7.7 of appendix A to this part. Note that R_{ref} shall always be based upon the most recent normal-load RATA, even if that RATA was performed in the calendar quarter being evaluated.

$$E_h = \frac{|R_{ref} - R_h|}{R_{ref}} \times 100 \qquad \text{(Eq. B-2)}$$

where:

E_h = Absolute percentage difference between the hourly average flow-to-load ratio and the reference value of the flow-to-load ratio at normal load.

R_h = The hourly average flow-to-load ratio, for each flow rate recorded at a load level within ± 10.0 percent of L_{avg}.

R_{ref} = The reference value of the flow-to-load ratio from the most recent normal-load flow RATA, determined in accordance with section 7.7 of appendix A to this part.

(6) Equation B–2 shall be used in a consistent manner. That is, use R_{ref} and R_h if the flow-to-load ratio is being evaluated, and use $(GHR)_{ref}$ and $(GHR)_h$ if the gross heat rate is being evaluated. Finally, calculate E_f, the arithmetic average of all of the hourly E_h values. The owner or operator shall report the results of each quarterly flow-to-load (or gross heat rate) evaluation, as determined from Equation B–2, in the electronic quarterly report required under § 75.64.

(b) *Acceptable results.* The results of a quarterly flow-to-load (or gross heat rate) evaluation are acceptable, and no further action is required, if the calculated value of E_f is less than or equal to: (1) 15.0 percent, if L_{avg} for the most recent normal-load flow RATA is ≥60 megawatts (or ≥500 klb/hr of steam) and if unadjusted flow rates were used in the calculations; or (2) 10.0 percent, if L_{avg} for the most recent normal-load flow RATA is ≥60 megawatts (or ≥500 klb/hr of steam) and if bias-adjusted flow rates were used in the calculations; or (3) 20.0 percent, if L_{avg} for the most recent normal-load flow RATA is <60 megawatts (or <500 klb/hr of steam) and if unadjusted flow rates were used in the calculations; or (4) 15.0 percent, if L_{avg} for the most recent normal-load flow RATA is <60 megawatts (or <500 klb/hr of steam) and if bias-adjusted flow rates were used in the calculations. If E_f is above these limits, the owner or operator shall either: implement Option 1 in section 2.2.5.1 of this appendix; or perform a RATA in accordance with Option 2 in section 2.2.5.2 of this appendix; or re-examine the hourly data used for the flow-to-load or GHR analysis and recalculate E_f, after excluding all non-representative hourly flow rates.

(c) *Recalculation of E_f.* If the owner or operator chooses to recalculate E_f, the flow rates for the following hours are considered non-representative and may be excluded from the data analysis:

(1) Any hour in which the type of fuel combusted was different from the fuel burned during the most recent normal-load RATA. For purposes of this determination, the type of fuel is different if the fuel is in a different state of matter (i.e., solid, liquid, or gas) than is the fuel burned during the RATA or if the fuel is a different classification of coal (e.g., bituminous versus sub-bituminous);

(2) For a unit that is equipped with an SO_2 scrubber and which always discharges its flue gases to the atmosphere through a single stack, any hour in which the SO_2 scrubber was bypassed;

(3) Any hour in which ''ramping'' occurred, i.e., the hourly load differed by more than ±15.0 percent from the load during the preceding hour or the subsequent hour;

(4) For a unit with a multiple stack discharge configuration consisting of a main stack and a bypass stack, any hour in which the flue gases were discharged through both stacks;

(5) If a normal-load flow RATA was performed and passed during the quarter being analyzed, any hour prior to completion of that RATA; and

(6) If a problem with the accuracy of the flow monitor was discovered during the quarter and was corrected (as evidenced by passing the abbreviated flow-to-load test in section 2.2.5.3 of this appendix), any hour prior to completion of the abbreviated flow-to-load test.

(7) After identifying and excluding all non-representative hourly data in accordance with paragraphs (c)(1) through (6) of this section, the owner or operator may analyze the remaining data a second time. At least 168 representative hourly ratios or GHR values must be available to perform the analysis; otherwise, the flow-to-load (or GHR) analysis is not required for that monitor for that calendar quarter.

(8) If, after re-analyzing the data, E_f meets the applicable limit in paragraph (b)(1), (b)(2), (b)(3), or (b)(4) of this section, no further action is required. If, however, E_f is still above the applicable limit, the monitor shall be declared out-of-control, beginning with the first hour of the quarter following the quarter in which E_f exceeded the applicable limit. The owner or operator shall then either implement Option 1 in section 2.2.5.1 of this appendix or Option 2 in section 2.2.5.2 of this appendix.

2.2.5.1 Option 1

Within two weeks of the end of the calendar quarter for which the E_f value is above the applicable limit, investigate and troubleshoot the applicable flow monitor(s). Evaluate the results of each investigation as follows:

(a) If the investigation fails to uncover a problem with the flow monitor, a RATA shall be performed in accordance with Option 2 in section 2.2.5.2 of this appendix.

(b) If a problem with the flow monitor is identified through the investigation (including the need to re-linearize the monitor by changing the polynomial coefficients or K factor(s)), corrective actions shall be taken. All corrective actions (e.g., non-routine maintenance, repairs, major component replacements, re-linearization of the monitor, etc.) shall be documented in the operation and maintenance records for the monitor. Data from the monitor shall remain invalid until a probationary calibration error test of the monitor is passed following completion of all corrective actions, at which point data from the monitor are conditionally valid. The owner or operator then either may complete the abbreviated flow-to-load test in section 2.2.5.3 of this appendix, or, if the corrective action taken has required relinearization of the flow monitor, shall perform a 3-level RATA.

2.2.5.2 Option 2

Perform a single-load RATA (at a load designated as normal under section 6.5.2.1 of appendix A to this part) of each flow monitor for which E_f is outside of the applicable limit. Data from the monitor remain invalid until the required RATA has been passed.

2.2.5.3 Abbreviated Flow-to-Load Test

(a) The following abbreviated flow-to-load test may be performed after any documented repair, component replacement, or other corrective maintenance to a flow monitor (except for changes affecting the linearity of the flow monitor, such as adjusting the flow monitor coefficients or K factor(s)) to demonstrate that the repair, replacement, or other maintenance has not significantly affected the monitor's ability to accurately measure the stack gas volumetric flow rate. Data from the monitoring system are considered invalid from the hour of commencement of the repair, replacement, or maintenance until the hour in which a probationary calibration error test is passed following completion of the repair, replacement, or maintenance and any associated adjustments to the monitor. The abbreviated flow-to-load test shall be completed within 168 unit operating hours of the probationary calibration error test (or, for peaking units, within 30 unit operating days, if that is less restrictive). Data from the monitor are considered to be conditionally valid (as defined in § 72.2 of this chapter), beginning with the hour of the probationary calibration error test.

(b) Operate the unit(s) in such a way as to reproduce, as closely as practicable, the exact conditions at the time of the most recent normal-load flow RATA. To achieve this, it is recommended that the load be held constant to within ±5.0 percent of the average load during the RATA and that the diluent gas (CO_2 or O_2) concentration be maintained within ±0.5 percent CO_2 or O_2 of the average diluent concentration during the RATA. For common stacks, to the extent practicable, use the same combination of units and load levels that were used during the RATA. When the process parameters have been set, record a minimum of six and a maximum of 12 consecutive hourly average flow rates, using the flow monitor(s) for which E_f was outside the applicable limit. For peaking units, a minimum of three and a maximum of 12 consecutive hourly average flow rates are required. Also record the corresponding hourly load values and, if applicable, the hourly diluent gas concentrations. Calculate the flow-to-load ratio (or GHR) for each hour in the test hour period, using Equation B–1 or B–1a. Determine E_h for each hourly flow-

to-load ratio (or GHR), using Equation B–2 of this appendix and then calculate E_f, the arithmetic average of the E_h values.

(c) The results of the abbreviated flow-to-load test shall be considered acceptable, and no further action is required if the value of E_f does not exceed the applicable limit specified in section 2.2.5 of this appendix. All conditionally valid data recorded by the flow monitor shall be considered quality assured, beginning with the hour of the probationary calibration error test that preceded the abbreviated flow-to-load test. However, if E_f is outside the applicable limit, all conditionally valid data recorded by the flow monitor shall be considered invalid back to the hour of the probationary calibration error test that preceded the abbreviated flow-to-load test, and a single-load RATA is required in accordance with section 2.2.5.2 of this appendix. If the flow monitor must be re-linearized, however, a 3-load RATA is required.

2.3 Semiannual and Annual Assessments

For each primary and redundant backup monitoring system, perform relative accuracy assessments either semiannually or annually, as specified in section 2.3.1.1 or 2.3.1.2 of this appendix, for the type of test and the performance achieved. This requirement applies as of the calendar quarter following the calendar quarter in which the monitoring system is provisionally certified. A summary chart showing the frequency with which a relative accuracy test audit must be performed, depending on the accuracy achieved, is located at the end of this appendix in Figure 2.

2.3.1 Relative Accuracy Test Audit (RATA)

2.3.1.1 Standard RATA Frequencies

(a) Except as otherwise specified in § 75.21(a)(6) or (a)(7) or in section 2.3.1.2 of this appendix, perform relative accuracy test audits semiannually, i.e., once every two successive QA operating quarters (as defined in § 72.2 of this chapter) for each primary and redundant backup SO_2 pollutant concentration monitor, flow monitor, CO_2 pollutant concentration monitor (including O_2 monitors used to determine CO_2 emissions), CO_2 or O_2 diluent monitor used to determine heat input, moisture monitoring system, NO_X concentration monitoring system, NO_X-diluent continuous emission monitoring system, or SO_2-diluent continuous emission monitoring system. A calendar quarter that does not qualify as a QA operating quarter shall be excluded in determining the deadline for the next RATA. No more than eight successive calendar quarters shall elapse after the quarter in which a RATA was last performed without a subsequent RATA having been conducted. If a RATA has not been completed by the end of the eighth calendar quarter since the quarter of the last RATA, then the RATA must be completed within a 720 unit (or stack) operating hour grace period (as provided in section 2.3.3 of this appendix) following the end of the eighth successive elapsed calendar quarter, or data from the CEMS will become invalid.

(b) The relative accuracy test audit frequency of a CEMS may be reduced, as specified in section 2.3.1.2 of this appendix, for primary or redundant backup monitoring systems which qualify for less frequent testing. Perform all required RATAs in accordance with the applicable procedures and provisions in sections 6.5 through 6.5.2.2 of appendix A to this part and sections 2.3.1.3 and 2.3.1.4 of this appendix.

2.3.1.2 Reduced RATA Frequencies

Relative accuracy test audits of primary and redundant backup SO_2 pollutant concentration monitors, CO_2 pollutant concentration monitors (including O_2 monitors used to determine CO_2 emissions), CO_2 or O_2 diluent monitors used to determine heat input, moisture monitoring systems, NO_X concentration monitoring systems, flow monitors, NO_X-diluent monitoring systems or SO_2-diluent monitoring systems may be performed annually (i.e., once every four successive QA operating quarters, rather than once every two successive QA operating quarters) if any of the following conditions are met for the specific monitoring system involved:

(a) The relative accuracy during the audit of an SO_2 or CO_2 pollutant concentration monitor (including an O_2 pollutant monitor used to measure CO_2 using the procedures in appendix F to this part), or of a CO_2 or O_2 diluent monitor used to determine heat input, or of a NO_X concentration monitoring system, or of a NO_X-diluent monitoring system, or of an SO_2-diluent continuous emissions monitoring system is ≤ 7.5 percent;

(b) Prior to January 1, 2000, the relative accuracy during the audit of a flow monitor is ≤ 10.0 percent at each operating level tested;

(c) On and after January 1, 2000, the relative accuracy during the audit of a flow monitor is ≤ 7.5 percent at each operating level tested;

(d) For low flow (≤ 10.0 fps) stacks/ducts, when the flow monitor fails to achieve a relative accuracy ≤ 7.5 percent (10.0 percent if prior to January 1, 2000) during the audit, but the monitor mean value, calculated using Equation A–7 in appendix A to this part and converted back to an equivalent velocity in standard feet per second (fps), is within ± 1.5 fps of the reference method mean value, converted to an equivalent velocity in fps;

(e) For low SO_2 or NO_X emitting units (average SO_2 or NO_X concentrations ≤ 250 ppm, when an SO_2 pollutant concentration monitor or NO_X concentration monitoring system fails to achieve a relative accuracy ≤ 7.5 percent during the audit, but the monitor mean value from the RATA is within ± 12 ppm of the reference method mean value;

(f) For units with low NO_X emission rates (average NO_X emission rate ≤ 0.200 lb/mmBtu), when a NO_X-diluent continuous emission monitoring system fails to achieve a relative accuracy ≤ 7.5 percent, but the monitoring system mean value from the RATA, calculated using Equation A–7 in appendix A to this part, is within ± 0.015 lb/mmBtu of the reference method mean value;

(g) For units with low SO_2 emission rates (average SO_2 emission rate ≤ 0.500 lb/mmBtu), when an SO_2-diluent continuous emission monitoring system fails to achieve a relative accuracy ≤ 7.5 percent, but the monitoring system mean value from the RATA, calculated using Equation A–7 in appendix A to this part, is within ± 0.025 lb/mmBtu of the reference method mean value;

(h) For a CO_2 or O_2 monitor, when the mean difference between the reference method values from the RATA and the corresponding monitor values is within ± 0.7 percent CO_2 or O_2; and

(i) When the relative accuracy of a continuous moisture monitoring system is ≤ 7.5 percent or when the mean difference between the reference method values from the RATA and the corresponding monitoring system values is within ± 1.0 percent H_2O.

2.3.1.3 RATA Load Levels and Additional RATA Requirements

(a) For SO_2 pollutant concentration monitors, CO_2 pollutant concentration monitors (including O_2 monitors used to determine CO_2 emissions), CO_2 or O_2 diluent monitors used to determine heat input, NO_X concentration monitoring systems, moisture monitoring systems, SO_2-diluent monitoring systems and NO_X-diluent monitoring systems, the required semiannual or annual RATA tests shall be done at the load level designated as normal under section 6.5.2.1 of appendix A to this part. If two load levels are designated as normal, the required RATA(s) may be done at either load level.

(b) For flow monitors installed on peaking units and bypass stacks, all required semiannual or annual relative accuracy test audits shall be single-load audits at the normal load, as defined in section 6.5.2.1 of appendix A to this part.

(c) For all other flow monitors, the RATAs shall be performed as follows:

(1) An annual 2-load flow RATA shall be done at the two most frequently used load levels, as determined under section 6.5.2.1 of appendix A to this part.

(2) If the flow monitor is on a semiannual RATA frequency, 2-load flow RATAs and single-load flow RATAs at normal load may be performed alternately.

(3) A single-load annual flow RATA, at the most frequently used load level, may be performed in lieu of the 2-load RATA if the results of an historical load data analysis show that in the time period extending from the ending date of the last annual flow RATA to a date that is no more than 7 days prior to the date of the current annual flow RATA, the unit has operated at a single load level (low, mid or high) for ≥ 85.0 percent of the time. * * *

(4) A 3-load RATA, at the low-, mid-, and high-load levels, determined under section 6.5.2.1 of appendix A to this part, shall be performed at least once in every period of five consecutive calendar years.

(5) A 3-load RATA is required whenever a flow monitor is re-linearized, i.e., when its polynomial coefficients or K factor(s) are changed.

(6) For all multi-level flow audits, the audit points at adjacent load levels (e.g., mid and high) shall be separated by no less than 25.0 percent of the ''range of operation,'' as defined in section 6.5.2.1 of appendix A to this part.

(d) A RATA of a moisture monitoring system shall be performed whenever the coefficient, K factor or mathematical algorithm determined under section 6.5.7 of appendix A to this part is changed.

2.3.1.4 Number of RATA Attempts

The owner or operator may perform as many RATA attempts as are necessary to achieve the desired relative accuracy test audit frequencies and/or bias adjustment factors. However, the data validation procedures in section 2.3.2 of this appendix must be followed.

2.3.2 Data Validation

(a) A RATA shall not commence if the monitoring system is operating out-of-control with respect to any of the daily and quarterly quality assurance assessments required by sections 2.1 and 2.2 of this appendix or with respect to the additional calibration error test requirements in section 2.1.3 of this appendix.

(b) Each required RATA shall be done according to paragraphs (b)(1), (b)(2) or (b)(3) of this section:

(1) The RATA may be done ''cold,'' i.e., with no corrective maintenance, repair, calibration adjustments, re-linearization or reprogramming of the monitoring system prior to the test.

(2) The RATA may be done after performing only the routine or non-routine calibration adjustments described in section 2.1.3 of this appendix at the zero and/or upscale calibration gas levels, but no other corrective maintenance, repair, re-linearization or reprogramming of the monitoring system. Trial RATA runs may be performed after the calibration adjustments and additional adjustments within the allowable limits in section 2.1.3 of this appendix may be made prior to the RATA, as necessary, to optimize the performance of the CEMS. The trial RATA runs need not be reported, provided that they meet the specification for trial RATA runs in § 75.20(b)(3)(vii)(E)(*2*). However, if, for any trial run, the specification in § 75.20(b)(3)(vii)(E)(*2*) is not met, the trial run shall be counted as an aborted RATA attempt.

(3) The RATA may be done after repair, corrective maintenance, re-linearization or reprogramming of the monitoring system. In this case, the monitoring system shall be considered out-of-control from the hour in which the repair, corrective maintenance, re-linearization or reprogramming is commenced until the RATA has been passed. Alternatively, the data validation procedures and associated timelines in §§ 75.20(b)(3)(ii) through (ix) may be followed upon completion of the necessary repair, corrective maintenance, re-linearization or reprogramming. If the procedures in § 75.20(b)(3) are used, the words ''quality assurance'' apply instead of the word ''recertification.''

(c) Once a RATA is commenced, the test must be done hands-off. No adjustment of the monitor's calibration is permitted during the RATA test period, other than the routine calibration adjustments following daily calibration error tests, as described in section 2.1.3 of this appendix. For 2-level and 3-level flow monitor audits, no linearization or reprogramming of the monitor is permitted in between load levels.

(d) For single-load RATAs, if a daily calibration error test is failed during a RATA test period, prior to completing the test, the RATA must be repeated. Data from the monitor are invalidated prospectively from the hour of the failed calibration error test until the hour of completion of a subsequent successful calibration error test. The subsequent RATA shall not be commenced until the monitor has successfully passed a calibration error test in accordance with section 2.1.3 of this appendix. For multiple-load flow RATAs, each load level is treated as a separate RATA (i.e., when a calibration error test is failed prior to completing the RATA at a particular load level, only the RATA at that load level must be repeated; the results of any previously-passed RATA(s) at the other load level(s) are unaffected, unless re-linearization of the monitor is required to correct the problem that caused the calibration failure, in which case a subsequent 3-load RATA is required).

(e) If a RATA is failed (that is, if the relative accuracy exceeds the applicable specification in section 3.3 of appendix A to this part) or if the RATA is aborted prior to completion due to a problem with the CEMS, then the CEMS is out-of-control and all emission data from the CEMS are invalidated prospectively from the hour in which the RATA is failed or aborted. Data from the CEMS remain invalid until the hour of completion of a subsequent RATA that meets the applicable specification in section 3.3 of appendix A to this part, unless the option in paragraph (b)(3) of this section to use the data validation procedures and associated timelines in §§ 75.20(b)(3)(ii) through (b)(3)(ix) has been selected, in which case the beginning and end of the out-of-control period shall be determined in accordance with § 75.20(b)(3)(vii)(A) and (B). Note that a monitoring system shall not be considered out-of-control when a RATA is aborted for a reason other than monitoring system malfunction (see paragraph (h) of this section).

(f) For a 2-level or 3-level flow RATA, if, at any load level, a RATA is failed or aborted due to a problem with the flow monitor, the RATA at that load level must be repeated. The flow monitor is considered out-of-control and data from the monitor are invalidated from the hour in which the test is failed or aborted and remain invalid until the passing of a RATA at the failed load level, unless the option in paragraph (b)(3) of this section to use the data validation procedures and associated timelines in § 75.20(b)(3)(ii) through (b)(3)(ix) has been selected, in which case the beginning and end of the out-of-control period shall be determined in accordance with § 75.20(b)(3)(vii)(A) and (B). Flow RATA(s) that were previously passed at the other load level(s) do not have to be repeated unless the flow monitor must be re-linearized following the failed or aborted test. If the flow monitor is re-linearized, a subsequent 3-load RATA is required.

(g) For a CO_2 pollutant concentration monitor (or an O_2 monitor used to measure CO_2 emissions) which also serves as the diluent component in a NO_X-diluent (or SO_2-diluent) monitoring system, if the CO_2 (or O_2) RATA is failed, then both the CO_2 (or O_2) monitor and the associated NO_X-diluent (or SO_2-diluent) system are considered out-of-control, beginning with the hour of completion of the failed CO_2 (or O_2) monitor RATA, and continuing until the hour of completion of subsequent hands-off RATAs which demonstrate that both systems have met the applicable relative accuracy specifications in sections 3.3.2 and 3.3.3 of appendix A to this part, unless the option in paragraph (b)(3) of this section to use the data validation procedures and associated timelines in §§ 75.20(b)(3)(ii) through (b)(3)(ix) has been selected, in which case the beginning and end of the out-of-control period shall be determined in accordance with §§ 75.20(b)(3)(vii) (A) and (B).

(h) For each monitoring system, report the results of all completed and partial RATAs that affect data validation (i.e., all completed, passed RATAs; all completed, failed RATAs; and all RATAs aborted due to a problem with the CEMS, including trial RATA runs counted as failed test attempts under paragraph (b)(2) of this section or under § 75.20(b)(3)(vii)(F)) in the quarterly report required under § 75.64. Note that RATA attempts that are aborted or invalidated due to problems with the reference method or due to operational problems with the affected unit(s) need not be reported. Such runs do not affect the validation status of emission data recorded by the CEMS. However, a record of all RATAs, trial RATA runs and RATA attempts (whether reported or not) must be kept on-site as part of the official test log for each monitoring system.

(i) Each time that a hands-off RATA of an SO_2 pollutant concentration monitor, a NO_X-diluent monitoring system, a NO_X concentration monitoring system or a flow monitor is passed, perform a bias test in accordance with section 7.6.4 of appendix A to this part. Apply the appropriate bias adjustment factor to the reported SO_2, NO_X, or flow rate data, in accordance with section 7.6.5 of appendix A to this part.

(j) Failure of the bias test does not result in the monitoring system being out-of-control.

2.3.3 RATA Grace Period

(a) The owner or operator has a grace period of 720 consecutive unit operating hours, as defined in § 72.2 of this chapter (or, for CEMS installed on common stacks or bypass stacks, 720 consecutive stack operating hours, as defined in § 72.2 of this chapter), in which to complete the required RATA for a particular CEMS whenever: a required RATA has not been performed by the end of the QA operating quarter in which it is due; or five consecutive calendar years have elapsed without a required 3-load flow RATA having been conducted; or for a unit which is conditionally exempted under § 75.21(a)(7) from the SO_2 RATA requirements of this part, an SO_2 RATA has not been completed by the end of the calendar quarter in which the annual usage of fuel(s) with a sulfur content higher than very low sulfur fuel(as defined in § 72.2 of this chapter) exceeds 480 hours; or eight

successive calendar quarters have elapsed, following the quarter in which a RATA was last performed, without a subsequent RATA having been done, due either to infrequent operation of the unit(s) or frequent combustion of very low sulfur fuel, as defined in § 72.2 of this chapter (SO_2 monitors, only), or a combination of these factors.

(b) Except for SO_2 monitoring system RATAs, the grace period shall begin with the first unit (or stack) operating hour following the calendar quarter in which the required RATA was due. For SO_2 monitor RATAs, the grace period shall begin with the first unit (or stack) operating hour in which fuel with a total sulfur content higher than that of very low sulfur fuel (as defined in § 72.2 of this chapter) is burned in the unit(s), following the quarter in which the required RATA is due. Data validation during a RATA grace period shall be done in accordance with the applicable provisions in section 2.3.2 of this appendix.

(c) If, at the end of the 720 unit (or stack) operating hour grace period, the RATA has not been completed, data from the monitoring system shall be invalid, beginning with the first unit operating hour following the expiration of the grace period. Data from the CEMS remain invalid until the hour of completion of a subsequent hands-off RATA. Note that when a RATA (or RATAs, if more than one attempt is made) is done during a grace period in order to satisfy a RATA requirement from a previous quarter, the deadline for the next RATA shall be determined from the quarter in which the RATA was due, not from the quarter in which the RATA is actually completed. However, if a RATA deadline determined in this manner is less than two QA operating quarters from the quarter in which the missed RATA is completed , the RATA deadline shall be re-set at two QA operating quarters from the quarter in which the missed RATA is completed .

2.3.4 Bias Adjustment Factor

Except as otherwise specified in section 7.6.5 of appendix A to this part, if an SO_2 pollutant concentration monitor, flow monitor, NO_X continuous emission monitoring system, or NO_X concentration monitoring system used to calculate NO_X mass emissions fails the bias test specified in section 7.6 of appendix A to this part, use the bias adjustment factor given in Equations A–11 and A–12 of appendix A to this part to adjust the monitored data.

2.4 Recertification, Quality Assurance, RATA Frequency and Bias Adjustment Factors (Special Considerations)

(a) When a significant change is made to a monitoring system such that recertification of the monitoring system is required in accordance with § 75.20(b), a recertification test (or tests) must be performed to ensure that the CEMS continues to generate valid data. In all recertifications, a RATA will be one of the required tests; for some recertifications, other tests will also be required. A recertification test may be used to satisfy the quality assurance test requirement of this appendix. For example, if, for a particular change made to a CEMS, one of the required recertification tests is a linearity check and the linearity check is successful, then, unless another such recertification event occurs in that same QA operating quarter, it would not be necessary to perform an additional linearity test of the CEMS in that quarter to meet the quality assurance requirement of section 2.2.1 of this appendix. For this reason, EPA recommends that owners or operators coordinate component replacements, system upgrades, and other events that may require recertification, to the extent practicable, with the periodic quality assurance testing required by this appendix. When a quality assurance test is done for the dual purpose of recertification and routine quality assurance, the applicable data validation procedures in § 75.20(b)(3) shall be followed.

(b) Except as provided in section 2.3.3 of this appendix, whenever a passing RATA of a gas monitor or a passing 2-load or 3-load RATA of a flow monitor is performed (irrespective of whether the RATA is done to satisfy a recertification requirement or to meet the quality assurance requirements of this appendix, or both), the RATA frequency (semi-annual or annual) shall be established based upon the date and time of completion of the RATA and the relative accuracy percentage obtained. For 2-load and 3-load flow RATAs, use the highest percentage relative accuracy at any of the loads to determine the RATA frequency. The results of a single-load flow RATA may be used to establish the RATA frequency when the single-load flow RATA is specifically required under section 2.3.1.3(b) of this appendix (for flow monitors installed on peaking units and bypass stacks) or when the single-load RATA is allowed under section 2.3.1.3(c) of this appendix for a unit that has operated at the most frequently used load level for ≥85.0 percent of the time since the last annual flow RATA. No other single-load flow RATA may be used to establish an annual RATA frequency; however, a 2-load or 3-load flow RATA may be performed at any time or in place of any required single-load RATA, in order to establish an annual RATA frequency.

2.5 Other Audits

* * * * *

FIGURE 1 TO APPENDIX B OF PART 75—Quality Assurance Test Requirements.

Test	QA test frequency requirements		
	Daily*	Quarterly*	Semiannual*
Calibration Error (2 pt.)			
Interference (flow)			
Flow-to-Load Ratio			
Leak Check (DP flow monitors)			
Linearity (3 pt.)			
RATA (SO_2, NO_X, CO_2, H_2O)[1]			
RATA (flow)[1,2]			

-For monitors on bypass stack/duct, ''daily'' means bypass operating days, only. ''Quarterly'' means once every QA operating quarter. ''Semi-annual'' means once every two QA operating quarters.

[1] Conduct RATA annually (i.e., once every four QA operating quarters), if monitor meets accuracy requirements to qualify for less frequent testing.

[2] For flow monitors installed on peaking units and bypass stacks, conduct all RATAs at a single, normal load. For other flow monitors, conduct annual RATAs at the two load levels used most frequently since the last annual RATA. Alternating single-load and 2-load RATAs may be done if a monitor is on a semiannual frequency. A single-load RATA may be done in lieu of a 2-load RATA if, since the last annual flow RATA, the unit has operated at one load level for ≥85.0 percent of the time. A 3-load RATA is required at least once in every period of five consecutive calendar years and whenever a flow monitor is re-linearized.

FIGURE 2 TO APPENDIX B OF PART 75—RELATIVE ACCURACY TEST FREQUENCY INCENTIVE SYSTEM .

RATA	Semiannual [1] (percent)	Annual [1]
SO_2 or NO_X[3]	7.5% <RA ≤ 10.0% or ± 15.0 ppm[2]	RA ≤ 7.5% or ± 12.0 ppm[2]
SO_2-diluent	7.5% < RA ≤ 10.0% or ± 0.030 lb/mmBtu[2]	RA ≤ 7.5% or ± 0.025. lb/mmBtu[2]
NO_X-diluent	7.5% < RA ≤ 10.0% or ± 0.020	RA ≤ 7.5% or ± 0.015.

FIGURE 2 TO APPENDIX B OF PART 75—RELATIVE ACCURACY TEST FREQUENCY INCENTIVE SYSTEM .—Continued

RATA	Semiannual [1] (percent)	Annual [1]
	lb/mmBtu [2]	lb/mmBtu [2].
Flow (Phase I)	10.0% < RA ≤ 15.0% or ± 1.5 fps [2]	RA ≤ 10.0%.
Flow (Phase II)	7.5% < RA ≤ 10.0% or ± 1.5 fps [2]	RA ≤ 7.5%.
CO_2 or O_2	7.5% < RA ≤ 10.0% or ± 1.0% CO_2/O_2 [2]	RA ≤ 7.5% or ± 0.7% CO_2/O_2 [2].
Moisture	7.5% < RA ≤ 10.0% or ± 1.5% H_2O_2	RA ≤ 7.5% or ± 1.0% H_2O [2].

[1] The deadline for the next RATA is the end of the second (if semiannual) or fourth (if annual) successive QA operating quarter following the quarter in which the CEMS was last tested. Exclude calendar quarters with fewer than 168 unit operating hours (or, for common stacks and bypass stacks, exclude quarters with fewer than 168 stack operating hours) in determining the RATA deadline. For SO_2 monitors, QA operating quarters in which only very low sulfur fuel as defined in § 72.2, is combusted may also be excluded. However, the exclusion of calendar quarters is limited as follows: the deadline for the next RATA shall be no more than 8 calendar quarters after the quarter in which a RATA was last performed.

[2] The difference between monitor and reference method mean values applies to moisture monitors, CO_2, and O_2 monitors, low emitters, or low flow, only.

[3] A NO_X concentration monitoring system used to determine NO_2 mass emissions under § 75.71.

Appendix C To Part 75—Missing Data Statistical Estimation Procedures

62.–63. Appendix C to part 75 is amended by revising sections 2.1, 2.2.1, 2.2.2, 2.2.3, and 2.2.5, and by revising section 2.2.3.9 to read as follows:

2. Load-Based Procedure for Missing Flow Rate and NO_X Emission Rate Data

2.1 Applicability

This procedure is applicable for data from all affected units for use in accordance with the provisions of this part to provide substitute data for volumetric flow rate (scfh), NO_X emission rate (in lb/mmBtu) from NO_X-diluent continuous emission monitoring systems, and NO_X concentration data (in ppm) from NOx concentration monitoring systems used to determine NO_X mass emissions.

2.2 * * *

2.2.1 For a single unit, establish ten operating load ranges defined in terms of percent of the maximum hourly average gross load of the unit, in gross megawatts (MWge), as shown in Table C–1. (Do not use integrated hourly gross load in MW-hr.) For units sharing a common stack monitored with a single flow monitor, the load ranges for flow (but not for NO_X) may be broken down into 20 operating load ranges in increments of 5.0 percent of the combined maximum hourly average gross load of all units utilizing the common stack. If this option is selected, the twentieth (uppermost) operating load range shall include all values greater than 95.0 percent of the maximum hourly average gross load. For a cogenerating unit or other unit at which some portion of the heat input is not used to produce electricity or for a unit for which hourly average gross load in MWge is not recorded separately, use the hourly gross steam load of the unit, in pounds of steam per hour at the measured temperature (°F) and pressure (psia) instead of MWge. Indicate a change in the number of load ranges or the units of loads to be used in the precertification section of the monitoring plan.

TABLE C–1.—DEFINITION OF OPERATING LOAD RANGES FOR LOAD-BASED SUBSTITUTION DATA PROCEDURES

Operating load range	Percent of maximum hourly gross load or maximum hourly gross steam load (percent)
1	0–10
2	>10–20
3	>20–30
4	>30–40
5	>40–50
6	>50–60
7	>60–70
8	>70–80
9	>80–90
10	>90

2.2.2 Beginning with the first hour of unit operation after installation and certification of the flow monitor or the NO_X-diluent continuous emission monitoring system (or a NO_X concentration monitoring system used to determine NO_X mass emissions, as defined in § 75.71(a)(2)), for each hour of unit operation record a number, 1 through 10, (or 1 through 20 for flow at common stacks) that identifies the operating load range corresponding to the integrated hourly gross load of the unit(s) recorded for each unit operating hour.

2.2.3 Beginning with the first hour of unit operation after installation and certification of the flow monitor or the NO_X-diluent continuous emission monitoring system (or a NO_X concentration monitoring system used to determine NO_X mass emissions, as defined in § 75.71(a)(2)) and continuing thereafter, the data acquisition and handling system must be capable of calculating and recording the following information for each unit operating hour of missing flow or NO_X data within each identified load range during the shorter of: (a) the previous 2,160 quality assured monitor operating hours (on a rolling basis), or (b) all previous quality assured monitor operating hours.

* * * * *

2.2.3.9 Average of the hourly NO_X pollutant concentrations, in ppm, reported by a NO_X concentration monitoring system used to determine NO_X mass emissions, as defined in § 75.71(a)(2).

* * * * *

2.2.5 When a bias adjustment is necessary for the flow monitor and/or the NO_X-diluent continuous emission monitoring system (and/or the NO_X concentration monitoring system used to determine NO_X mass emissions, as defined in § 75.71(a)(2)), apply the adjustment factor to all monitor or continuous emission monitoring system data values placed in the load ranges.

* * * * *

Appendix D To Part 75—Optional SO_2 Emissions Data Protocol for Gas-Fired and Oil-Fired Units

64. Appendix D to part 75 is amended by revising section 1.1 to read as follows:

1. Applicability

1.1 This protocol may be used in lieu of continuous SO_2 pollutant concentration and flow monitors for the purpose of determining hourly SO_2 mass emissions and heat input from: gas-fired units, as defined in § 72.2 of this chapter, or oil-fired units, as defined in § 72.2 of this chapter. Section 2.1 of this appendix provides procedures for measuring oil or gaseous fuel flow using a fuel flowmeter, section 2.2 of this appendix provides procedures for conducting oil sampling and analysis to determine sulfur content and gross calorific value (GCV) of fuel oil, and section 2.3 of this appendix provides procedures for determining the sulfur content and GCV of gaseous fuels.

* * * * *

65. Appendix D to part 75 is further amended by:

a. Revising sections 2.1 and 2.1.1;
b. Addding sections 2.1.1.1 through 2.1.1.3;
c. Revising sections 2.1.2 through 2.1.4;
d. Adding sections 2.1.4.1 through 2.1.4.3;
e. Revising sections 2.1.5 through 2.1.5.2;
f. Adding sections 2.1.5.3 through 2.1.5.4;
g. Revising sections 2.1.6 through 2.1.6.2;
h. Adding sections 2.1.6.3 through 2.1.7.5;
i. Revising sections 2.2 and 2.2.1;
j. Removing sections 2.2.1.1 and 2.2.1.2;
k. Removing and reserving section 2.2.2;
l. Revising sections 2.2.3 and 2.2.4;
m. Adding sections 2.2.4.1 through 2.2.4.3;

n. Revising the first sentence of section 2.2.6;

o. Revising sections 2.2.8 and 2.3 through 2.3.2.1;

p. Adding sections 2.3.2.1.1 and 2.3.2.1.2;

q. Revising section 2.3.2.2;

r. Adding sections 2.3.2.3 through 2.3.6;

s. Revising section 2.4.1;

t. Removing section 2.4.2, and redesignating sections 2.4.3, 2.4.3.1, 2.4.3.2, 2.4.3.3 and 2.4.4 as sections 2.4.2, 2.4.2.1, 2.4.2.2, 2.4.2.3 and 2.4.3, respectively; and

u. Revising newly redesignated sections 2.4.2, 2.4.2.1, and 2.4.2.3 to read as follows:

2. Procedure

2.1 Fuel Flowmeter Measurements

For each hour when the unit is combusting fuel, measure and record the flow rate of fuel combusted by the unit, except as provided in section 2.1.4 of this appendix. Measure the flow rate of fuel with an in-line fuel flowmeter, and automatically record the data with a data acquisition and handling system, except as provided in section 2.1.4 of this appendix.

2.1.1 Measure the flow rate of each fuel entering and being combusted by the unit. If, on an annual basis, more than 5.0 percent of the fuel from the main pipe is diverted from the unit without being burned and that diversion occurs downstream of the fuel flowmeter, an additional in-line fuel flowmeter is required to account for the unburned fuel. In this case, record the flow rate of each fuel combusted by the unit as the difference between the flow measured in the pipe leading to the unit and the flow in the pipe diverting fuel away from the unit. However, the additional fuel flowmeter is not required if, on an annual basis, the total amount of fuel diverted away from the unit, expressed as a percentage of the total annual fuel usage by the unit is demonstrated to be less than or equal to 5.0 percent. The owner or operator may make this demonstration in the following manner:

2.1.1.1 For existing units with fuel usage data from fuel flowmeters, if data are submitted from a previous year demonstrating that the total diverted yearly fuel does not exceed 5% of the total fuel used; or

2.1.1.2 For new units which do not have historical data, if a letter is submitted signed by the designated representative certifying that, in the future, the diverted fuel will not exceed 5.0% of the total annual fuel usage ; or

2.1.1.3 By using a method approved by the Administrator under § 75.66(d).

2.1.2 Install and use fuel flowmeters meeting the requirements of this appendix in a pipe going to each unit, or install and use a fuel flowmeter in a common pipe header (i.e., a pipe carrying fuel for multiple units). However, the use of a fuel flowmeter in a common pipe header and the provisions of sections 2.1.2.1 and 2.1.2.2 of this appendix are not applicable to any unit that is using the provisions of subpart H of this part to monitor, record, and report NO_X mass emissions under a state or federal NO_X mass emission reduction program. For all other units, if the fuel flowmeter is installed in a common pipe header, do one of the following:

2.1.2.1 Measure the fuel flow rate in the common pipe, and combine SO_2 mass emissions for the affected units for recordkeeping and compliance purposes; or

2.1.2.2 Provide information satisfactory to the Administrator on methods for apportioning SO_2 mass emissions and heat input to each of the affected units demonstrating that the method ensures complete and accurate accounting of the actual emissions from each of the affected units included in the apportionment and all emissions regulated under this part. The information shall be provided to the Administrator through a petition submitted by the designated representative under § 75.66. Satisfactory information includes: the proposed apportionment, using fuel flow measurements; the ratio of hourly integrated gross load (in MWe-hr) in each unit to the total load for all units receiving fuel from the common pipe header, or the ratio of hourly steam flow (in 1000 lb) at each unit to the total steam flow for all units receiving fuel from the common pipe header (see section 3.4.3 of this appendix); and documentation that shows the provisions of sections 2.1.5 and 2.1.6 of this appendix have been met for the fuel flowmeter used in the apportionment.

2.1.3 For a gas-fired unit or an oil-fired unit that continuously or frequently combusts a supplemental fuel for flame stabilization or safety purposes, measure the flow rate of the supplemental fuel with a fuel flowmeter meeting the requirements of this appendix.

2.1.4 Situations in Which Certified Flowmeter is Not Required

2.1.4.1 Start-up or Ignition Fuel

For an oil-fired unit that uses gas solely for start-up or burner ignition or a gas-fired unit that uses oil solely for start-up or burner ignition, a flowmeter for the start-up fuel is not required. Estimate the volume of oil combusted for each start-up or ignition either by using a fuel flowmeter or by using the dimensions of the storage container and measuring the depth of the fuel in the storage container before and after each start-up or ignition. A fuel flowmeter used solely for start-up or ignition fuel is not subject to the calibration requirements of sections 2.1.5 and 2.1.6 of this appendix. Gas combusted solely for start-up or burner ignition does not need to be measured separately.

2.1.4.2 Gas or Oil Flowmeter Used for Commercial Billing

A gas or oil flowmeter used for commercial billing of natural gas or oil may be used to measure, record, and report hourly fuel flow rate. A gas or oil flowmeter used for commercial billing of natural gas or oil is not required to meet the certification requirements of section 2.1.5 of this appendix or the quality assurance requirements of section 2.1.6 of this appendix under the following circumstances:

(a) The gas or oil flowmeter is used for commercial billing under a contract, provided that the company providing the gas or oil under the contract and each unit combusting the gas or oil do not have any common owners and are not owned by subsidiaries or affiliates of the same company;

(b) The designated representative reports hourly records of gas or oil flow rate, heat input rate, and emissions due to combustion of natural gas or oil;

(c) The designated representative also reports hourly records of heat input rate for each unit, if the gas or oil flowmeter is on a common pipe header, consistent with section 2.1.2 of this appendix;

(d) The designated representative reports hourly records directly from the gas or oil flowmeter used for commercial billing if these records are the values used, without adjustment, for commercial billing, or reports hourly records using the missing data procedures of section 2.4 of this appendix if these records are not the values used, without adjustment, for commercial billing; and

(e) The designated representative identifies the gas or oil flowmeter in the unit's monitoring plan.

2.1.4.3 Emergency Fuel

The designated representative of a unit that is restricted by its Federal, State or local permit to combusting a particular fuel only during emergencies where the primary fuel is not available is exempt from certifying a fuel flowmeter for use during combustion of the emergency fuel. During any hour in which the emergency fuel is combusted, report the hourly heat input to be the maximum rated heat input of the unit for the fuel. Additionally, begin sampling the emergency fuel for sulfur content only using the procedures under section 2.2 (for oil) or 2.3 (for gas) of this appendix. The designated representative shall also provide notice under § 75.61(a)(6)(ii) for each period when the emergency fuel is combusted.

2.1.5 Initial Certification Requirement for all Fuel Flowmeters

For the purposes of initial certification, each fuel flowmeter used to meet the requirements of this protocol shall meet a flowmeter accuracy of 2.0 percent of the upper range value (i.e. maximum calibrated fuel flow rate) across the range of fuel flow rate to be measured at the unit. Flowmeter accuracy may be determined under section 2.1.5.1 of this appendix for initial certification in any of the following ways (as applicable): by design or by measurement under laboratory conditions; by the manufacturer; by an independent laboratory; or by the owner or operator. Flowmeter accuracy may also be determined under section 2.1.5.2 of this appendix by measurement against a NIST traceable reference method.

2.1.5.1 Use the procedures in the following standards to verify flowmeter accuracy or design, as appropriate to the type of flowmeter: ASME MFC–3M–1989 with September 1990 Errata (''Measurement of Fluid Flow in Pipes Using Orifice, Nozzle, and Venturi''); ASME MFC–4M–1986 (Reaffirmed 1990), ''Measurement of Gas Flow by Turbine Meters;'' American Gas Association Report No. 3, ''Orifice Metering of Natural Gas and Other Related Hydrocarbon Fluids Part 1: General Equations and Uncertainty Guidelines''

(October 1990 Edition), Part 2: ''Specification and Installation Requirements'' (February 1991 Edition), and Part 3: ''Natural Gas Applications'' (August 1992 edition) (excluding the modified flow-calculation method in part 3); Section 8, Calibration from American Gas Association Transmission Measurement Committee Report No. 7: Measurement of Gas by Turbine Meters (Second Revision, April, 1996); ASME MFC–5M–1985 (''Measurement of Liquid Flow in Closed Conduits Using Transit-Time Ultrasonic Flowmeters''); ASME MFC–6M–1987 with June 1987 Errata (''Measurement of Fluid Flow in Pipes Using Vortex Flow Meters''); ASME MFC–7M–1987 (Reaffirmed 1992), ''Measurement of Gas Flow by Means of Critical Flow Venturi Nozzles;'' ISO 8316: 1987(E) ''Measurement of Liquid Flow in Closed Conduits—Method by Collection of the Liquid in a Volumetric Tank;'' American Petroleum Institute (API) Section 2, ''Conventional Pipe Provers'', Section 3, ''Small Volume Provers'', and Section 5, ''Master-Meter Provers'', from Chapter 4 of the Manual of Petroleum Measurement Standards, October 1988 (Reaffirmed 1993); or ASME MFC–9M–1988 with December 1989 Errata (''Measurement of Liquid Flow in Closed Conduits by Weighing Method''), for all other flowmeter types (incorporated by reference under § 75.6). The Administrator may also approve other procedures that use equipment traceable to National Institute of Standards and Technology standards. Document such procedures, the equipment used, and the accuracy of the procedures in the monitoring plan for the unit, and submit a petition signed by the designated representative under § 75.66(c). If the flowmeter accuracy exceeds 2.0 percent of the upper range value, the flowmeter does not qualify for use under this part.

2.1.5.2 (a) Alternatively, determine the flowmeter accuracy of a fuel flowmeter used for the purposes of this part by comparing it to the measured flow from a reference flowmeter which has been either designed according to the specifications of American Gas Association Report No. 3 or ASME MFC–3M–1989, as cited in section 2.1.5.1 of this appendix, or tested for accuracy during the previous 365 days, using a standard listed in section 2.1.5.1 of this appendix or other procedure approved by the Administrator under § 75.66 (all standards incorporated by reference under § 75.6). Any secondary elements, such as pressure and temperature transmitters, must be calibrated immediately prior to the comparison. Perform the comparison over a period of no more than seven consecutive unit operating days. Compare the average of three fuel flow rate readings over 20 minutes or longer for each meter at each of three different flow rate levels. The three flow rate levels shall correspond to:

(1) Normal full unit operating load,

(2) Normal minimum unit operating load,

(3) A load point approximately equally spaced between the full and minimum unit operating loads, and

(4) Calculate the flowmeter accuracy at each of the three flow levels using the following equation:

$$ACC = \frac{|R - A|}{URV} \times 100 \qquad \text{(Eq. D-1)}$$

Where:

ACC=Flowmeter accuracy at a particular load level, as a percentage of the upper range value.

R=Average of the three flow measurements of the reference flowmeter.

A=Average of the three measurements of the flowmeter being tested.

URV=Upper range value of fuel flowmeter being tested (i.e. maximum measurable flow).

(c) Notwithstanding the requirement for calibration of the reference flowmeter within 365 days prior to an accuracy test, when an in-place reference meter or prover is used for quality assurance under section 2.1.6 of this appendix, the reference meter calibration requirement may be waived if, during the previous in-place accuracy test with that reference meter, the reference flowmeter and the flowmeter being tested agreed to within ±1.0 percent of each other at all levels tested. This exception to calibration and flowmeter accuracy testing requirements for the reference flowmeter shall apply for periods of no longer than five consecutive years (i.e., 20 consecutive calendar quarters).

2.1.5.3 If the flowmeter accuracy exceeds the specification in section 2.1.5 of this appendix, the flowmeter does not qualify for use for this appendix. Either recalibrate the flowmeter until the flowmeter accuracy is within the performance specification, or replace the flowmeter with another one that is demonstrated to meet the performance specification. Substitute for fuel flow rate using the missing data procedures in section 2.4.2 of this appendix until quality assured fuel flow data become available.

2.1.5.4 For purposes of initial certification, when a flowmeter is tested against a reference fuel flow rate (i.e., fuel flow rate from another fuel flowmeter under section 2.1.5.2 of this appendix or flow rate from a procedure performed according to a standard incorporated by reference under section 2.1.5.1 of this appendix), report the results of flowmeter accuracy tests using the following Table D–1.

TABLE D–1.—TABLE OF FLOWMETER ACCURACY RESULTS

Test number:_____ Test completion date [1]:_____ Test completion time [1]:_____
Reinstallation date [2] (for testing under 2.1.5.1 only):_____ Reinstallation time [2]:_____
Unit or pipe ID: Component/System ID:
Flowmeter serial number: Upper range value:
Units of measure for flowmeter and reference flow readings:

Measurement level (percent of URV)	Run No.	Time of run (HHMM)	Candidate flowmeter reading	Reference flow reading	Percent accuracy (percent of URV)
Low (Minimum) level	1				
____ percent [3] of URV	2				
	3				
	Average				
Mid-level	1				
____ percent [3] of URV	2				
	3				
	Average				
High (Maximum) level	1				
____ percent [3] of URV	2				
	3				
	Average				

[1] Report the date, hour, and minute that all test runs were completed.

[2] For laboratory tests not performed inline, report the date and hour that the fuel flowmeter was reinstalled following the test.

[3] It is required to test at least at three different levels: (1) normal full unit operating load, (2) normal minimum unit operating load, and (3) a load point approximately equally spaced between the full and minimum unit operating loads.

2.1.6 Quality Assurance

(a) Test the accuracy of each fuel flowmeter prior to use under this part and at least once every four fuel flowmeter QA operating quarters, as defined in § 72.2 of this chapter, thereafter. Notwithstanding these requirements, no more than 20 successive calendar quarters shall elapse after the quarter in which a fuel flowmeter was last tested for accuracy without a subsequent flowmeter accuracy test having been conducted. Test the flowmeter accuracy more frequently if required by manufacturer specifications.

(b) Except for orifice-, nozzle-, and venturi-type flowmeters, perform the required flowmeter accuracy testing using the procedures in either section 2.1.5.1 or section 2.1.5.2 of this appendix. Each fuel flowmeter must meet the accuracy specification in section 2.1.5 of this appendix.

(c) For orifice-, nozzle-, and venturi-type flowmeters, either perform the required flowmeter accuracy testing using the procedures in section 2.1.5.1 or 2.1.5.2 of this appendix or perform a transmitter accuracy test once every four fuel flowmeter QA operating quarters and a primary element visual inspection once every 12 calendar quarters, according to the procedures in sections 2.1.6.1 through 2.1.6.4 of this appendix for periodic quality assurance.

(d) Notwithstanding the requirements of this section, if the procedures of section 2.1.7 (fuel flow-to-load test) of this appendix are performed during each fuel flowmeter QA operating quarter, subsequent to a required flowmeter accuracy test or transmitter accuracy test and primary element inspection, where applicable, those procedures may be used to meet the requirement for periodic quality assurance testing for a period of up to 20 calendar quarters from the previous accuracy test or transmitter accuracy test and primary element inspection, where applicable.

2.1.6.1 Transmitter or Transducer Accuracy Test for Orifice-, Nozzle-, and Venturi-Type Flowmeters

(a) Calibrate the differential pressure transmitter or transducer, static pressure transmitter or transducer, and temperature transmitter or transducer, as applicable, using equipment that has a current certificate of traceability to NIST standards. Check the calibration of each transmitter or transducer by comparing its readings to that of the NIST traceable equipment at least once at each of the following levels: the zero-level and at least two other levels (e.g., ''mid'' and ''high''), such that the full range of transmitter or transducer readings corresponding to normal unit operation is represented.

(b) Calculate the accuracy of each transmitter or transducer at each level tested, using the following equation:

$$ACC = \frac{|R - T|}{FS} \times 100 \qquad \text{(Eq. D-1a)}$$

Where:

ACC = Accuracy of the transmitter or transducer as a percentage of full-scale.

R = Reading of the NIST traceable reference value (in milliamperes, inches of water, psi, or degrees).

T = Reading of the transmitter or transducer being tested (in milliamperes, inches of water, psi, or degrees, consistent with the units of measure of the NIST traceable reference value).

FS = Full-scale range of the transmitter or transducer being tested (in milliamperes, inches of water, psi, or degrees, consistent with the units of measure of the NIST traceable reference value).

(c) If each transmitter or transducer meets an accuracy of ± 1.0 percent of its full-scale range at each level tested, the fuel flowmeter accuracy of 2.0 percent is considered to be met at all levels. If, however, one or more of the transmitters or transducers does not meet an accuracy of ± 1.0 percent of full-scale at a particular level, then the owner or operator may demonstrate that the fuel flowmeter meets the total accuracy specification of 2.0 percent at that level by using one of the following alternative methods. If, at a particular level, the sum of the individual accuracies of the three transducers is less than or equal to 4.0 percent, the fuel flowmeter accuracy specification of 2.0 percent is considered to be met for that level. Or, if at a particular level, the total fuel flowmeter accuracy is 2.0 percent or less, when calculated in accordance with Part 1 of American Gas Association Report No. 3, General Equations and Uncertainty Guidelines, the flowmeter accuracy requirement is considered to be met for that level.

2.1.6.2 Recordkeeping and Reporting of Transmitter or Transducer Accuracy Results

(a) Record the accuracy of the orifice, nozzle, or venturi meter or its individual transmitters or transducers and keep this information in a file at the site or other location suitable for inspection. When testing individual orifice, nozzle, or venturi meter transmitters or transducers for accuracy, include the information displayed in the following Table D–2. At a minimum, record results for each transmitter or transducer at the zero-level and at least two other levels across the range of the transmitter or transducer readings that correspond to normal unit operation.

TABLE D–2.—TABLE OF FLOWMETER TRANSMITTER OR TRANSDUCER ACCURACY RESULTS

Test number:_____ Test completion date: _____ Unit or pipe ID: _____
Flowmeter serial number: Component/System ID:
Full-scale value: Units of measure: [3]
Transducer/Transmitter Type (check one):
____ Differential Pressure
____ Static Pressure
____ Temperature

Measurement level (percent of full-scale)	Run number (if multiple runs) [2]	Run time (HHMM)	Transmitter/ transducer input (pre-calibration)	Expected transmitter/ transducer output (reference)	Actual transmitter/ transducer output [3]	Percent accuracy (percent of full-scale)
Low (Minimum) level						
____ percent [1] of full-scale	.....					
Mid-level						
____ percent [1] of full-scale	.....					
(If tested at more than 3 levels)						
2nd Mid-level						
____ percent [1] of full-scale	.....					
(If tested at more than 3 levels)						
3rd Mid-level						
____ percent [1] of full-scale	.....					
High (Maximum) level						
____ percent [1] of full-scale	.....					

[1] At a minimum, it is required to test at zero-level and at least two other levels across the range of the transmitter or transducer readings corresponding to normal unit operation.

[2] It is required to test at least once at each level.

[3] Use the same units of measure for all readings (e.g., use degrees (°), inches of water (in H_2O), pounds per square inch (psi), or milliamperes (ma) for both transmitter or transducer readings and reference readings).

(b) When accuracy testing of the orifice, nozzle, or venturi meter is performed according to section 2.1.5.2 of this appendix, record the information displayed in Table D–1 in this section. At a minimum, record the overall flowmeter accuracy results for the fuel flowmeter at the three flow rate levels specified in section 2.1.5.2 of this appendix.

(c) Report the results of all fuel flowmeter accuracy tests, transmitter or transducer accuracy tests, and primary element inspections, as applicable, in the emissions report for the quarter in which the quality assurance tests are performed, using the electronic format specified by the Administrator under § 75.64.

2.1.6.3 Failure of Transducer(s) or Transmitter(s)

If, during a transmitter or transducer accuracy test conducted according to section 2.1.6.1 of this appendix, the flowmeter accuracy specification of 2.0 percent is not met at any of the levels tested, repair or replace transmitter(s) or transducer(s) as necessary until the flowmeter accuracy specification has been achieved at all levels. (Note that only transmitters or transducers which are repaired or replaced need to be re-tested; however, the re-testing is required at all three measurement levels, to ensure that the flowmeter accuracy specification is met at each level). The fuel flowmeter is ''out-of-control'' and data from the flowmeter are considered invalid, beginning with the date and hour of the failed accuracy test and continuing until the date and hour of completion of a successful transmitter or transducer accuracy test at all levels. In addition, if, during normal operation of the fuel flowmeter, one or more transmitters or transducers malfunction, data from the fuel flowmeter shall be considered invalid from the hour of the transmitter or transducer failure until the hour of completion of a successful 3-level transmitter or transducer accuracy test. During fuel flowmeter out-of-control periods, provide data from another fuel flowmeter that meets the requirements of § 75.20(d) and section 2.1.5 of this appendix, or substitute for fuel flow rate using the missing data procedures in section 2.4.2 of this appendix. Record and report test data and results, consistent with sections 2.1.6.1 and 2.1.6.2 of this appendix and § 75.56 or § 75.59, as applicable.

2.1.6.4 Primary Element Inspection

(a) Conduct a visual inspection of the orifice, nozzle, or venturi meter at least once every twelve calendar quarters. Notwithstanding this requirement, the procedures of section 2.1.7 of this appendix may be used to reduce the inspection frequency of the orifice, nozzle, or venturi meter to at least once every twenty calendar quarters. The inspection may be performed using a baroscope. If the visual inspection indicates that the orifice, nozzle, or venturi meter has become damaged or corroded, then:

(1) Replace the primary element with another primary element meeting the requirements of American Gas Association Report No. 3 or ASME MFC–3M–1989, as cited in section 2.1.5.1 of this appendix (both standards incorporated by reference under § 75.6);

(2) Replace the primary element with another primary element, and demonstrate that the overall flowmeter accuracy meets the accuracy specification in section 2.1.5 of this appendix under the procedures of section 2.1.5.2 of this appendix; or

(3) Restore the damaged or corroded primary element to ''as new'' condition; determine the overall accuracy of the flowmeter, using either the specifications of American Gas Association Report No. 3 or ASME MFC–3M–1989, as cited in section 2.1.5.1 of this appendix (both standards incorporated by reference under § 75.6); and retest the transmitters or transducers prior to providing quality assured data from the flowmeter.

(b) If the primary element size is changed, calibrate the transmitter or transducers consistent with the new primary element size. Data from the fuel flowmeter are considered invalid, beginning with the date and hour of a failed visual inspection and continuing until the date and hour when:

(1) The damaged or corroded primary element is replaced with another primary element meeting the requirements of American Gas Association Report No. 3 or ASME MFC–3M–1989, as cited in section 2.1.5.1 of this appendix (both standards incorporated by reference under § 75.6);

(2) The damaged or corroded primary element is replaced, and the overall accuracy of the flowmeter is demonstrated to meet the accuracy specification in section 2.1.5 of this appendix under the procedures of section 2.1.5.2 of this appendix; or

(3) The restored primary element is installed to meet the requirements of American Gas Association Report No. 3 or ASME MFC–3M–1989, as cited in section 2.1.5.1 of this appendix (both standards incorporated by reference under § 75.6) and its transmitters or transducers are retested to meet the accuracy specification in section 2.1.6.1 of this appendix.

(c) During this period, provide data from another fuel flowmeter that meets the requirements of § 75.20(d) and section 2.1.5 of this appendix, or substitute for fuel flow rate using the missing data procedures in section 2.4.2 of this appendix.

2.1.7 Fuel Flow-to-Load Quality Assurance Testing for Certified Fuel Flowmeters

The procedures of this section may be used as an optional supplement to the quality assurance procedures in section 2.1.5.1, 2.1.5.2, 2.1.6.1, or 2.1.6.4 of this appendix when conducting periodic quality assurance testing of a certified fuel flowmeter. Note, however, that these procedures may not be used unless the 168-hour baseline data requirement of section 2.1.7.1 of this appendix has been met. If, following a flowmeter accuracy test or flowmeter transmitter test and primary element inspection, where applicable, the procedures of this section are performed during each subsequent fuel flowmeter QA operating quarter, as defined in § 72.2 of this chapter (excluding the quarter(s) in which the baseline data are collected), then these procedures may be used to meet the requirement for periodic quality assurance for a period of up to 20 calendar quarters from the previous periodic quality assurance procedure(s) performed according to sections 2.1.5.1, 2.1.5.2, or 2.1.6.1 through 2.1.6.4 of this appendix. The procedures of this section are not required for any quarter in which a flowmeter accuracy test or a transmitter accuracy test and a primary element inspection, where applicable, are conducted. Notwithstanding the requirements of § 75.54(a) or § 75.57(a), as applicable, when using the procedures of this section, keep records of the test data and results from the previous flowmeter accuracy test under section 2.1.5.1 or 2.1.5.2 of this appendix, records of the test data and results from the previous transmitter or transducer accuracy test under section 2.1.6.1 of this appendix for orifice-, nozzle-, and venturi-type fuel flowmeters, and records of the previous visual inspection of the primary element required under section 2.1.6.4 of this appendix for orifice-, nozzle-, and venturi-type fuel flowmeters until the next flowmeter accuracy test, transmitter accuracy test, or visual inspection is performed, even if the previous flowmeter accuracy test, transmitter accuracy test, or visual inspection was performed more than three years previously.

2.1.7.1 Baseline Flow Rate-to-Load Ratio or Heat Input-to-Load Ratio

(a) Determine R_{base}, the baseline value of the ratio of fuel flow rate to unit load, following each successful periodic quality assurance procedure performed according to sections 2.1.5.1, 2.1.5.2, or 2.1.6.1 and 2.1.6.4 of this appendix. Establish a baseline period of data consisting, at a minimum, of 168 hours of quality assured fuel flowmeter data. Baseline data collection shall begin with the first hour of fuel flowmeter operation following completion of the most recent quality assurance procedure(s), during which only the fuel measured by the fuel flowmeter is combusted (i.e., only gas, only residual oil, or only diesel fuel is combusted by the unit). During the baseline data collection period, the owner or operator may exclude as non-representative any hour in which the unit is ''ramping'' up or down, (i.e., the load during the hour differs by more than 15.0 percent from the load in the previous or subsequent hour) and may exclude any hour in which the unit load is in the lower 25.0 percent of the range of operation, as defined in section 6.5.2.1 of appendix A to this part (unless operation in this lower 25.0 percent of the range is considered normal for the unit). The baseline data must be obtained no later than the end of the fourth calendar quarter following the calendar quarter of the most recent quality assurance procedure for that fuel flowmeter. For orifice-, nozzle-, and venturi-type fuel flowmeters, if the fuel flow-

to-load ratio is to be used as a supplement both to the transmitter accuracy test under section 2.1.6.1 of this appendix and to primary element inspections under section 2.1.6.4 of this appendix, then the baseline data must be obtained after both procedures are completed and no later than the end of the fourth calendar quarter following the calendar quarter of both the most recent transmitter or transducer test and the most recent primary element inspection for that fuel flowmeter. From these 168 (or more) hours of baseline data, calculate the baseline fuel flow rate-to-load ratio as follows:

$$R_{base} = \frac{Q_{base}}{L_{avg}} \qquad \text{(Eq. D-1b)}$$

where:

R_{base} = Value of the fuel flow rate-to-load ratio during the baseline period; 100 scfh/MWe or 100 scfh/klb per hour steam load for gas-firing; (lb/hr)/MWe or (lb/hr)/klb per hour steam load for oil-firing.

Q_{base} = Average fuel flow rate measured by the fuel flowmeter during the baseline period, 100 scfh for gas-firing and lb/hr for oil-firing.

L_{avg} = Average unit load during the baseline period, megawatts or 1000 lb/hr of steam.

(b) In Equation D–1b, for a common pipe header, L_{avg} is the sum of the operating loads of all units that receive fuel through the common pipe header. For a unit that receives its fuel through multiple pipes, Q_{base} is the sum of the fuel flow rates for a particular fuel (i.e., gas, diesel fuel, or residual oil) from each of the pipes. Round off the value of R_{base} to the nearest tenth.

(c) Alternatively, a baseline value of the gross heat rate (GHR) may be determined in lieu of R_{base}. The baseline value of the GHR, GHR_{base}, shall be determined as follows:

$$(GHR)_{base} = \frac{(\text{Heat Input})_{avg}}{L_{avg}} \times 1000 \qquad \text{(Eq. D-1c)}$$

Where:

$(GHR)_{base}$ = Baseline value of the gross heat rate during the baseline period, Btu/kwh or Btu/lb steam load.

$(\text{Heat Input})_{avg}$ = Average (mean) hourly heat input rate recorded by the fuel flowmeter during the baseline period, as determined using the applicable equation in appendix F to this part, mmBtu/hr.

L_{avg} = Average (mean) unit load during the baseline period, megawatts or 1000 lb/hr of steam.

(d) Report the current value of R_{base} (or GHR_{base}) and the completion date of the associated quality assurance procedure in each electronic quarterly report required under § 75.64.

2.1.7.2 Data Preparation and Analysis

(a) Evaluate the fuel flow rate-to-load ratio (or GHR) for each fuel flowmeter QA operating quarter, as defined in § 72.2 of this chapter. At the end of each fuel flowmeter QA operating quarter, use Equation D–1d in this appendix to calculate R_h, the hourly fuel flow-to-load ratio, for every quality assured hourly average fuel flow rate obtained with a certified fuel flowmeter.

$$R_h = \frac{Q_h}{L_h} \qquad \text{(Eq. D-1d)}$$

where:

R_h = Hourly value of the fuel flow rate-to-load ratio; 100 scfh/MWe, (lb/hr)/MWe, 100 scfh/1000 lb/hr of steam load, or (lb/hr)/1000 lb/hr of steam load.

Q_h = Hourly fuel flow rate, as measured by the fuel flowmeter, 100 scfh for gas-firing or lb/hr for oil-firing.

L_h = Hourly unit load, megawatts or 1000 lb/hr of steam.

(b) For a common pipe header, L_h shall be the sum of the hourly operating loads of all units that receive fuel through the common pipe header. For a unit that receives its fuel through multiple pipes, Q_h will be the sum of the fuel flow rates for a particular fuel (i.e., gas, diesel fuel, or residual oil) from each of the pipes. Round off each value of R_h to the nearest tenth.

(c) Alternatively, calculate the hourly gross heat rates (GHR) in lieu of the hourly flow-to-load ratios. If this option is selected, calculate each hourly GHR value as follows:

$$(GHR)_h = \frac{(\text{Heat Input})_h}{L_h} \times 1000 \qquad \text{(Eq. D-1e)}$$

Where:

$(GHR)_h$ = Hourly value of the gross heat rate, Btu/kwh or Btu/lb steam load.

$(\text{Heat Input})_h$ = Hourly heat input rate, as determined using the applicable equation in appendix F to this part, mmBtu/hr.

L_h = Hourly unit load, megawatts or 1000 lb/hr of steam.

(d) Evaluate the calculated flow rate-to-load ratios (or gross heat rates) as follows. Perform a separate data analysis for each fuel flowmeter following the procedures of this section. Base each analysis on a minimum of 168 hours of data. If, for a particular fuel flowmeter, fewer than 168 hourly flow-to-load ratios (or GHR values) are available, a flow-to-load (or GHR) evaluation is not required for that flowmeter for that calendar quarter.

(e) For each hourly flow-to-load ratio or GHR value, calculate the percentage difference (percent D_h) from the baseline fuel flow-to-load ratio using Equation D–1f.

$$\%D_h = \frac{|R_{base} - R_h|}{R_{base}} \times 100 \qquad \text{(Eq. D-1f)}$$

Where:

$\%D_h$ = Absolute value of the percentage difference between the hourly fuel flow rate-to-load ratio and the baseline value of the fuel flow rate-to-load ratio (or hourly and baseline GHR).

R_h = The hourly fuel flow rate-to-load ratio (or GHR).

R_{base} = The value of the fuel flow rate-to-load ratio (or GHR) from the baseline period, determined in accordance with section 2.1.7.1 of this appendix.

(f) Consistently use R_{base} and R_h in Equation D–1f if the fuel flow-to-load ratio is being evaluated, and consistently use $(GHR)_{base}$ and $(GHR)_h$ in Equation D–1f if the gross heat rate is being evaluated.

(g) Next, determine the arithmetic average of all of the hourly percent difference (percent D_h) values using Equation D–1g, as follows:

$$E_f = \sum_{h=1}^{q} \frac{\%D_h}{q} \qquad \text{(Eq. D-1g)}$$

Where:

E_f = Quarterly average percentage difference between hourly flow rate-to-load ratios and the baseline value of the fuel flow rate-to-load ratio (or hourly and baseline GHR).

$\%D_h$ = Percentage difference between the hourly fuel flow rate-to-load ratio and the baseline value of the fuel flow rate-to-load ratio (or hourly and baseline GHR).

q = Number of hours used in fuel flow-to-load (or GHR) evaluation.

(h) When the quarterly average load value used in the data analysis is greater than 50 MWe (or 500 klb steam per hour), the results of a quarterly fuel flow rate-to-load (or GHR) evaluation are acceptable and no further action is required if the quarterly average percentage difference (E_f) is no greater than 10.0 percent. When the arithmetic average of the hourly load values used in the data analysis is ≤50 MWe (or 500 klb steam per hour), the results of the analysis are

acceptable if the value of E_f is no greater than 15.0 percent.

2.1.7.3 Optional Data Exclusions

(a) If E_f is outside the limits in section 2.1.7.2 of this appendix, the owner or operator may re-examine the hourly fuel flow rate-to-load ratios (or GHRs) that were used for the data analysis and identify and exclude fuel flow-to-load ratios or GHR values for any non-representative fuel flow-to-load ratios or GHR values. Specifically, the R_h or $(GHR)_h$ values for the following hours may be considered non-representative: any hour in which the unit combusted another fuel in addition to the fuel measured by the fuel flowmeter being tested; or any hour for which the load differed by more than ±15.0 percent from the load during either the preceding hour or the subsequent hour; or any hour for which the unit load was in the lower 25.0 percent of the range of operation, as defined in section 6.5.2.1 of appendix A to this part (unless operation in the lower 25.0 percent of the range is considered normal for the unit).

(b) After identifying and excluding all non-representative hourly fuel flow-to-load ratios or GHR values, analyze the quarterly fuel flow rate-to-load data a second time.

2.1.7.4 Consequences of Failed Fuel Flow-to-Load Ratio Test

(a) If E_f is outside the applicable limit in section 2.1.7.2 of this appendix (after analysis using any optional data exclusions under section 2.1.7.3 of this appendix), perform transmitter accuracy tests according to section 2.1.6.1 of this appendix for orifice-, nozzle-, and venturi-type flowmeters, or perform a fuel flowmeter accuracy test, in accordance with section 2.1.5.1 or 2.1.5.2 of this appendix, for each fuel flowmeter for which E_f is outside of the applicable limit. In addition, for an orifice-, nozzle-, or venturi-type fuel flowmeter, repeat the fuel flow-to-load ratio comparison of section 2.1.7.2 of this appendix using six to twelve hours of data following a passed transmitter accuracy test in order to verify that no significant corrosion has affected the primary element. If, for the abbreviated 6-to-12 hour test, the orifice-, nozzle-, or venturi-type fuel flowmeter is not able to meet the limit in section 2.1.7.2 of this appendix, then perform a visual inspection of the primary element according to section 2.1.6.4 of this appendix, and repair or replace the primary element, as necessary.

(b) Substitute for fuel flow rate, for any hour when that fuel is combusted, using the missing data procedures in section 2.4.2 of this appendix, beginning with the first hour of the calendar quarter following the quarter for which E_f was found to be outside the applicable limit and continuing until quality assured fuel flow data become available. Following a failed flow rate-to-load or GHR evaluation, data from the flowmeter shall not be considered quality assured until the hour in which all required flowmeter accuracy tests, transmitter accuracy tests, visual inspections and diagnostic tests have been passed. Additionally, a new value of R_{base} or $(GHR)_{base}$ shall be established no later than two flowmeter QA operating quarters after the quarter in which the required quality assurance tests are completed (note that for orifice-, nozzle-, or venturi-type fuel flowmeters, establish a new value of R_{base} or $(GHR)_{base}$ only if both a transmitter accuracy test and a primary element inspection have been performed).

2.1.7.5 Test Results

Report the results of each quarterly flow rate-to-load (or GHR) evaluation, as determined from Equation D–1g, in the electronic quarterly report required under § 75.64. Table D–3 is provided as a reference on the type of information to be recorded under § 75.59 and reported under § 75.64.

TABLE D–3.—BASELINE INFORMATION AND TEST RESULTS FOR FUEL FLOW-TO-LOAD TEST

Plant name:_____State:_____ORIS code:_____
Unit/pipe ID #:_____Fuel flowmeter component and system ID #s:_____-_____Calendar quarter (1st, 2nd, 3rd, 4th) and year:_____
Range of operation:_____ to _____ MWe or klb steam/hr (indicate units)

Time period	
Baseline period	Quarter
Completion date and time of most recent primary element inspection (orifice-, nozzle-, and venturi-type flowmeters only). ___/___/___ ___:___ Completion date and time of the most recent flowmeter or transmitter accuracy test ..... ___/___/___ ___:___ Beginning date and time of baseline period ..... ___/___/___ ___:___ End date and time of baseline period ..... ___/___/___ ___:___ Average fuel flow rate_____ (100 scfh for gas and lb/hr for oil) ..... Average load;_____ (MWe or 1000 lb steam/hr) ..... Baseline fuel flow-to-load ratio_____ Units of fuel flow-to-load:_____ Baseline GHR: _____ Units of fuel flow-to-load:_____ Number of hours excluded from baseline ratio or GHR due to ramping load:_____ Number of hours in the lower 25.0 percent of the range of operation excluded from baseline ration or GHR: _____ hrs.	Number of hours excluded from quarterly average due to co-firing different fuels:_____ hrs. Number of hours excluded from quarterly average due to ramping load: _____ hrs. Number of hours in the lower 25.0 percent of the range of operation excluded from quarterly average: _____ hrs. Number of hours included in quarterly average: _____ hrs. Quarterly percentage difference between hourly ratios and baseline ratio: _____ percent. Test result: pass, fail.

2.2 Oil Sampling and Analysis

Perform sampling and analysis of oil to determine the following fuel properties for each type of oil combusted by a unit: percentage of sulfur by weight in the oil; gross calorific value (GCV) of the oil; and, if necessary, the density of the oil. Use the sulfur content, density, and gross calorific value, determined under the provisions of this section, to calculate SO_2 mass emission rate and heat input rate for each fuel using the applicable procedures of section 3 of this appendix. The designated representative may petition for reduced GCV and or density sampling under § 75.66 if the fuel combusted

has a consistent and relatively non-variable GCV or density.

TABLE D–4.—OIL SAMPLING METHODS AND SULFUR, DENSITY AND GROSS CALORIFIC VALUE USED IN CALCULATIONS

Parameter	Sampling technique/frequency	Value used in calculations
Oil Sulfur Content	Daily manual sampling	1. Highest sulfur content from previous 30 daily samples; or 2. Actual daily value.
	Flow proportional/weekly composite	Actual measured value.
	In storage tank (after addition of fuel to tank)	1. Actual measured value; or 2. Highest of all sampled values in previous calendar year; or 3. Maximum value allowed by contract.[1]
	As delivered (in delivery truck or barge).[1]	1. Highest of all sampled values in previous calendar year; or 2. Maximum value allowed by contract.[1]
Oil Density	Daily manual sampling	1. Use the highest density from the previous 30 daily samples; or 2. Actual measured value.
	Flow proportional/weekly composite	Actual measured value.
	In storage tank (after addition of fuel to tank)	1. Actual measured value; or 2. Highest of all sampled values in previous calendar year; or 3. Maximum value allowed by contract.[1]
	As delivered (in delivery truck or barge).[1]	1. Highest of all sampled values in previous calendar year; or 2. Maximum value allowed by contract.[1]
Oil GCV	Daily manual sampling	1. Highest fuel GCV from the previous 30 daily samples; or 2. Actual measured value.
	Flow proportional/weekly composite	Actual measured value.
	In storage tank (after addition of fuel to tank)	1. Actual measured value; or 2. Highest of all sampled values in previous calendar year; or 3. Maximum value allowed by contract.[1]
	As delivered (in delivery truck or barge).[1]	1. Highest of all sampled values in previous calendar year; or 2. Maximum value allowed by contract.[1]

[1] Assumed values may only be used if sulfur content, gross calorific value, or density of each sample is no greater than the assumed value used to calculate emissions or heat input.

2.2.1 When combusting oil, use one of the following methods to sample the oil (see Table D–4): sample from the storage tank for the unit after each addition of oil to the storage tank, in accordance with section 2.2.4.2 of this appendix; or sample from the fuel lot in the shipment tank or container upon receipt of each oil delivery or from the fuel lot in the oil supplier's storage container, in accordance with section 2.2.4.3 of this appendix; or use the flow proportional sampling methodology in section 2.2.3 of this appendix; or use the daily manual sampling methodology in section 2.2.4.1 of this appendix. For purposes of this appendix, a fuel lot of oil is the mass or volume of product oil from one source (supplier or pretreatment facility), intended as one shipment or delivery (e.g., ship load, barge load, group of trucks, discrete purchase of diesel fuel through pipeline, etc.). A storage tank is a container at a plant holding oil that is actually combusted by the unit, such that no blending of any other fuel with the fuel in the storage tank occurs from the time that the fuel lot is transferred to the storage tank to the time when the fuel is combusted in the unit.

2.2.2 [Reserved]

2.2.3 Flow Proportional Sampling

Conduct flow proportional oil sampling or continuous drip oil sampling in accordance with ASTM D4177–82 (Reapproved 1990), ''Standard Practice for Automatic Sampling of Petroleum and Petroleum Products'' (incorporated by reference under § 75.6), every day the unit is combusting oil. Extract oil at least once every hour and blend into a composite sample. The sample compositing period may not exceed 7 calendar days (168 hrs). Use the actual sulfur content (and where density data are required, the actual density) from the composite sample to calculate the hourly SO_2 mass emission rates for each operating day represented by the composite sample. Calculate the hourly heat input rates for each operating day represented by the composite sample, using the actual gross calorific value from the composite sample.

2.2.4 Manual Sampling

2.2.4.1 Daily Samples

Representative oil samples may be taken from the storage tank or fuel flow line manually every day that the unit combusts oil according to ASTM D4057–88, ''Standard Practice for Manual Sampling of Petroleum and Petroleum Products'' (incorporated by reference under § 75.6). Use either the actual daily sulfur content or the highest fuel sulfur content recorded at that unit from the most recent 30 daily samples for the purpose of calculating SO_2 emissions under section 3 of this appendix. Use either the gross calorific value measured from that day's sample or the highest GCV from the previous 30 days' samples to calculate heat input. If oil supplies with different sulfur contents are combusted on the same day, sample the highest sulfur fuel combusted that day.

2.2.4.2 Sampling From a Unit's Storage Tank

Take a manual sample after each addition of oil to the storage tank. Do not blend additional fuel with the sampled fuel prior to combustion. Sample according to the single tank composite sampling procedure or all-levels sampling procedure in ASTM D4057–88, ''Standard Practice for Manual Sampling of Petroleum and Petroleum Products'' (incorporated by reference under § 75.6). Use the sulfur content (and where required, the density) of either the most recent sample or one of the conservative assumed values described in section 2.2.4.3 of this appendix to calculate SO_2 mass emission rate. Calculate heat input rate using the gross calorific value from either:

(a) The most recent oil sample taken or

(b) One of the conservative assumed values described in section 2.2.4.3 of this appendix.

2.2.4.3 Sampling From Each Delivery

(a) Alternatively, an oil sample may be taken from—

(1) The shipment tank or container upon receipt of each lot of fuel oil or

(2) The supplier's storage container which holds the lot of fuel oil. (Note: a supplier need only sample the storage container once for sulfur content, GCV and, where required, the density so long as the fuel sulfur content and GCV do not change and no fuel is added to the supplier's storage container.)

(b) For the purpose of this section, a lot is defined as a shipment or delivery (e.g., ship load, barge load, group of trucks, discrete purchase of diesel fuel through a pipeline, etc.) of a single fuel.

(c) Oil sampling may be performed either by the owner or operator of an affected unit, an outside laboratory, or a fuel supplier, provided that samples are representative and that sampling is performed according to either the single tank composite sampling procedure or the all-levels sampling procedure in ASTM D4057–88, ''Standard Practice for Manual Sampling of Petroleum and Petroleum Products'' (incorporated by reference under § 75.6). Except as otherwise provided in this section, calculate SO_2 mass

emission rate using the sulfur content (and where required, the density) from one of the two following values, and calculate heat input using the gross calorific value from one of the two following values:

(1) The highest value sampled during the previous calendar year (this option is allowed for any consistent fuel which comes from a single source whether or not the fuel is supplied under a contractual agreement) or

(2) The maximum value indicated in the contract with the fuel supplier. Continue to use this assumed contract value unless and until the actual sampled sulfur content, density, or gross calorific value of a delivery exceeds the assumed value.

(d) If the actual sampled sulfur content, gross calorific value, or density of an oil sample is greater than the assumed value for that parameter, then use the actual sampled value for sulfur content, gross calorific value, or density of fuel to calculate SO_2 mass emission rate or heat input rate as the new assumed sulfur content, gross calorific value, or density. Continue to use this new assumed value to calculate SO_2 mass emission rate or heat input rate unless and until: it is superseded by a higher value from an oil sample; or it is superseded by a new contract in which case the new contract value becomes the assumed value at the time the fuel specified under the new contract begins to be combusted in the unit; or (if applicable) both the calendar year in which the sampled value exceeded the assumed value and the subsequent calendar year have elapsed.

* * * * *

2.2.6 Where the flowmeter records volumetric flow rate rather than mass flow rate, analyze oil samples to determine the density or specific gravity of the oil. * * * * * * * * *

2.2.8 Results from the oil sample analysis must be available no later than thirty calendar days after the sample is composited or taken. However, during an audit, the Administrator may require that the results of the analysis be available as soon as practicable, and no later than 5 business days after receipt of a request from the Administrator.

2.3 SO_2 Emissions From Combustion of Gaseous Fuels

(a) Account for the hourly SO_2 mass emissions due to combustion of gaseous fuels for each hour when gaseous fuels are combusted by the unit using the procedures in this section.

(b) The procedures in sections 2.3.1 and 2.3.2 of this appendix, respectively, may be used to determine SO_2 mass emissions from combustion of pipeline natural gas and natural gas, as defined in § 72.2 of this chapter. The procedures in section 2.3.3 of this appendix may be used to account for SO_2 mass emissions from any gaseous fuel combusted by a unit. For each type of gaseous fuel, the appropriate sampling frequency and the sulfur content and GCV values used for calculations of SO_2 mass emission rates are summarized in the following Table D–5.

TABLE D–5.—GAS SULFUR AND GCV VALUES USED IN CALCULATIONS FOR VARIOUS FUEL TYPES

Parameter	Fuel type and sampling frequency	Value used in calculations
Gas Sulfur Content	Pipeline Natural Gas with H_2S content less than or equal to 0.3 grains/100scf when using the provisions of section 2.3.1 to determine SO_2 mass emissions.	0.0006 lb/mmBtu.
	Natural Gas with H_2S content less than or equal to 1.0 grain/100scf when using the provisions of section 2.3.2 to determine SO_2 mass emissions.	Default SO_2 emission rate calculated from Eq. D–1h, using either the fuel contract maximum H_2S or the maximum H_2S from historical sampling data.
	Any gaseous fuel delivered in shipments or lots—Sample each lot or shipment.	Actual % sulfur from most recent shipment *or* 1. Highest % sulfur from previous year's samples [1]; or 2. Maximum % sulfur value allowed by contract [1].
	Any gaseous fuel transmitted by pipeline and having a demonstrated ''low sulfur variability'' using the provisions of section 2.3.6—Sample daily.	Actual % sulfur from daily sample; or Highest % sulfur from previous 30 daily samples.
	Any gaseous fuel—Sample hourly	Actual hourly sulfur content of the gas.
Gas GCV	Pipeline Natural Gas—Sample monthly	1. GCV from most recent monthly sample (with ≥ 48 operating hours in the month); or 2. Maximum GCV from contract [1]; *or* 3. Highest GCV from previous year's samples. [1]
	Natural Gas—Sample monthly	1. GCV from most recent monthly sample (with ≥ 48 operating hours in the month); or 2. Maximum GCV from contract [1]; *or* 3. Highest GCV from previous year's samples. [1]
	Any gaseous fuel delivered in shipments or lots—Sample each lot or shipment.	Actual GCV from most recent shipment or lot *or* 1. Highest GCV from previous year's samples1; or 2. Maximum GCV value allowed by contract. [1]
	Any gaseous fuel transmitted by pipeline and having a demonstrated ''low GCV variability'' using the provisions of section 2.3.5—Sample monthly.	1. GCV from most recent monthly sample (with ≥ 48 operating hours in the month); or 2. Highest GCV from previous year's samples. [1]
	Any other gaseous fuel not having a ''low GCV variability''—Sample at least daily. (Note that the use of an on-line GCV calorimeter or gas chromatograph is allowed).	Actual daily or hourly GCV of the gas.

[1] Assumed sulfur content and GCV values (i.e., contract values or highest values from previous year) may only continue to be used if the sulfur content or GCV of each sample is no greater than the assumed value used to calculate SO_2 emissions or heat input.

2.3.1 Pipeline Natural Gas Combustion

The owner or operator may determine the SO_2 mass emissions from the combustion of a fuel that meets the definition of pipeline natural gas, in § 72.2 of this chapter, using the procedures of this section.

2.3.1.1 SO_2 Emission Rate

For a fuel that meets the definition of pipeline natural gas under § 72.2 of this chapter, the owner or operator may determine the SO_2 mass emissions using either a default SO_2 emission rate of 0.0006 lb/mmBtu and the procedures of this section, the procedures in section 2.3.2 for natural

gas, or the procedures of section 2.3.3 for any gaseous fuel. For each affected unit using the default rate of 0.0006 lb/mmBtu, the owner or operator must document that the fuel combusted is actually pipeline natural gas, using the procedures in section 2.3.1.4 of this appendix.

2.3.1.2 Hourly Heat Input Rate

Calculate hourly heat input rate, in mmBtu/hr, for a unit combusting pipeline natural gas, using the procedures of section 3.4.1 of this appendix. Use the measured fuel flow rate from section 2.1 of this appendix and the gross calorific value from section 2.3.4.1 of this appendix in the calculations.

2.3.1.3 SO_2 Hourly Mass Emission Rate and Hourly Mass Emissions

For pipeline natural gas combustion, calculate the SO2 mass emission rate, in lb/hr, using Equation D–5 in section 3.3.2 of this appendix (when the default SO_2 emission rate is used). Then, use the calculated SO_2 mass emission rate and the unit operating time to determine the hourly SO_2 mass emissions from pipeline natural gas combustion, in lb, using Equation D–12 in section 3.5.1 of this appendix.

2.3.1.4 Documentation That a Fuel Is Pipeline Natural Gas

(a) For pipeline natural gas, provide information in the monitoring plan required under § 75.53, demonstrating that the definition of pipeline natural gas in § 72.2 of this chapter has been met. The information must demonstrate that the fuel has a hydrogen sulfide content of less than 0.3 grain/100scf. The demonstration must be made using one of the following sources of information:

(1) The gas quality characteristics specified by a purchase contract or by a pipeline transportation contract;

(2) A certification of the gas vendor, based on routine vendor sampling and analysis (minimum of one year of data with samples taken monthly or more frequently);

(3) At least one year's worth of analytical data on the fuel hydrogen sulfide content from samples taken monthly or more frequently;

(4) For fuels delivered in shipments or lots, the sulfur content from all shipments or lots received in a one year period; or

(5) Data from a 720-hour demonstration conducted using the procedures of section 2.3.6 of this appendix.

(b) When a 720-hour test is used for initial qualification as pipeline natural gas, the owner or operator is required to continue sampling the fuel for hydrogen sulfide at least once per month for one year after the initial qualification period. The use of the default natural gas SO_2 emission rate under 2.3.1.1 is not allowed if any sample during the one year period has a hydrogen sulfide content greater than 0.3 gr/100 scf.

2.3.2 Natural Gas Combustion

The owner or operator may determine the SO_2 mass emissions from the combustion of a fuel that meets the definition of natural gas, in § 72.2 of this chapter, using the procedures of this section.

2.3.2.1 SO_2 Emission Rate

The owner or operator may account for SO_2 emissions either by using a default SO_2 emission rate, as determined under section 2.3.2.1.1 of this appendix, or by daily sampling of the gas sulfur content using the procedures of section 2.3.3 of this appendix. For each affected unit using a default SO_2 emission rate, the owner or operator must provide documentation that the fuel combusted is actually natural gas according to the procedures in section 2.3.2.4 of this appendix.

2.3.2.1.1 In lieu of daily sampling of the sulfur content of the natural gas, an SO_2 default emission rate may be determined using Equation D–1h. Round off the calculated SO_2 default emission rate to the nearest 0.0001 lb/mmBtu.

$$ER = H_2S \times 0.0026 \qquad \text{(Eq. D-1h)}$$

Where:

ER = Default SO_2 emission rate for natural gas combustion, lb/mmBtu.

H_2S = Hydrogen sulfide content of the natural gas, gr/100scf.

2.3.2.1.2 The hydrogen sulfide value used in Equation D–1h may be obtained from one of the following sources of information:

(a) The highest hydrogen sulfide content specified by a purchase contract or by a pipeline transportation contract;

(b) The highest hydrogen sulfide content from a certification of the gas vendor, based on routine vendor sampling and analysis (minimum of one year of data with samples taken monthly or more frequently);

(c) The highest hydrogen sulfide content from at least one year's worth of analytical data on the fuel hydrogen sulfide content from samples taken monthly or more frequently;

(d) For fuels delivered in shipments or lots, the highest hydrogen sulfide content from all shipments or lots received in a one year period; or (5) the highest hydrogen sulfide content measured during a 720-hour demonstration conducted using the procedures of section 2.3.6 of this appendix.

2.3.2.2 Hourly Heat Input Rate

Calculate hourly heat input rate for natural gas combustion, in mmBtu/hr, using the procedures in section 3.4.1 of this appendix. Use the measured fuel flow rate from section 2.1 of this appendix and the gross calorific value from section 2.3.4.2 of this appendix in the calculations.

2.3.2.3 SO_2 Mass Emission Rate and Hourly Mass Emissions

For natural gas combustion, calculate the SO_2 mass emission rate, in lb/hr, using Equation D–5 in section 3.3.2 of this appendix, when the default SO_2 emission rate is used. Then, use the calculated SO_2 mass emission rate and the unit operating time to determine the hourly SO_2 mass emissions from natural gas combustion, in lb, using Equation D–12 in section 3.5.1 of this appendix.

2.3.2.4 Documentation that a Fuel Is Natural Gas

(a) For natural gas, provide information in the monitoring plan required under § 75.53, demonstrating that the definition of natural gas in § 72.2 of this chapter has been met. The information must demonstrate that the fuel has a hydrogen sulfide content of less than 1.0 grain/100 scf. This demonstration must be made using one of the following sources of information:

(1) The gas quality characteristics specified by a purchase contract or by a transportation contract;

(2) A certification of the gas vendor, based on routine vendor sampling and analysis (minimum of one year of data with samples taken monthly or more frequently);

(3) At least one year's worth of analytical data on the fuel hydrogen sulfide content from samples taken monthly or more frequently;

(4) For fuels delivered in shipments or lots, sulfur content from all shipments or lots received in a one year period; or

(5) Data from a 720-hour demonstration conducted using the procedures of section 2.3.6 of this appendix.

(b) When a 720-hour test is used for initial qualification as natural gas, the owner or operator shall continue sampling the fuel for hydrogen sulfide at least once per month for one year after the initial qualification period. The use of the default natural gas SO_2 emission rate under 2.3.2.1.1 is not allowed if any sample during the one year period has a hydrogen sulfide content greater than 1.0 grain/100 scf.

2.3.3 SO_2 Mass Emissions From Any Gaseous Fuel

The owner or operator of a unit may determine SO_2 mass emissions using this section for any gaseous fuel (including fuels such as refinery gas, landfill gas, digester gas, coke oven gas, blast furnace gas, coal-derived gas, producer gas or any other gas which may have a variable sulfur content).

2.3.3.1 Sulfur Content Determination

2.3.3.1.1 Analyze the total sulfur content of the gaseous fuel in grain/100 scf, at the frequency specified in Table D–5 of this appendix. That is: for fuel delivered in discrete shipments or lots, sample each shipment or lot; for fuel transmitted by pipeline, if a demonstration is provided under section 2.3.6 of this appendix showing that the gaseous fuel has a ''low sulfur variability,'' determine the sulfur content daily using either manual sampling or a gas chromatograph; and for all other gaseous fuels, determine the sulfur content on an hourly basis using a gas chromatograph.

2.3.3.1.2 Use one of the following methods when using manual sampling (as applicable to the type of gas combusted) to determine the sulfur content of the fuel: ASTM D1072–90, ''Standard Test Method for Total Sulfur in Fuel Gases'', ASTM D4468–85 (Reapproved 1989) ''Standard Test Method for Total Sulfur in Gaseous Fuels by Hydrogenolysis and Radiometric Colorimetry,'' ASTM D5504–94 ''Standard Test Method for Determination of Sulfur Compounds in Natural Gas and Gaseous Fuels by Gas Chromatography and Chemiluminescence,'' or ASTM D3246–81 (Reapproved 1987) ''Standard Test Method for Sulfur in Petroleum Gas By Oxidative Microcoulometry'' (incorporated by reference under § 75.6).

2.3.3.1.3 The sampling and analysis of daily manual samples may be performed by the owner or operator, an outside laboratory, or the gas supplier. If hourly sampling with a gas chromatograph is required, or a source chooses to use an online gas chromatograph to determine daily fuel sulfur content, the owner or operator shall develop and implement a program to quality assure the data from the gas chromatograph, in accordance with the manufacturer's recommended procedures. The quality assurance procedures shall be kept on-site, in a form suitable for inspection.

2.3.3.1.4 Results of all sample analyses must be available no later than thirty calendar days after the sample is taken.

2.3.3.2 SO_2 Mass Emission Rate

Calculate the SO_2 mass emission rate for the gaseous fuel, in lb/hr, using equation D–4 in section 3.3.1 of this appendix. Use the appropriate sulfur content, in equation D–4, as specified in Table D–5 of this appendix. That is, for fuels delivered by pipeline which demonstrate a low sulfur variability (under section 2.3.6 of this appendix) use either the daily value or the highest value in the previous 30 days or for fuels requiring hourly sulfur content sampling with a gas chromatograph use the actual hourly sulfur content).

2.3.3.3 Hourly Heat Input Rate

Calculate the hourly heat input rate for combustion of the gaseous fuel, using the provisions in section 3.4.1 of this appendix. Use the measured fuel flow rate from section 2.1 of this appendix and the gross calorific value from section 2.3.4.3 of this appendix in the calculations.

2.3.4 Gross Calorific Values for Gaseous Fuels

Determine the GCV of each gaseous fuel at the frequency specified in this section, using one of the following methods: ASTM D1826–88, ASTM D3588–91, ASTM D4891–89, GPA Standard 2172–86 ''Calculation of Gross Heating Value, Relative Density and Compressibility Factor for Natural Gas Mixtures from Compositional Analysis,'' or GPA Standard 2261–90 ''Analysis for Natural Gas and Similar Gaseous Mixtures by Gas Chromatography'' (incorporated by reference under § 75.6 of this part). Use the appropriate GCV value, as specified in section 2.3.4.1, 2.3.4.2 or 2.3.4.3 of this appendix, in the calculation of unit hourly heat input rates.

2.3.4.1 GCV of Pipeline Natural Gas

Determine the GCV of fuel that is pipeline natural gas, as defined in § 72.2 of this chapter, at least once per calendar month. For GCV used in calculations use the specifications in Table D–5: either the value from the most recent monthly sample, the highest value specified in a contract or tariff sheet, or the highest value from the previous year. The fuel GCV value from the most recent monthly sample shall be used for any month in which that value is higher than a contract limit. If a unit combusts pipeline natural gas for less than 48 hours during a calendar month, the sampling and analysis requirement for GCV is waived for that calendar month. The preceding waiver is limited by the condition that at least one analysis for GCV must be performed for each quarter the unit operates for any amount of time.

2.3.4.2 GCV of Natural Gas

Determine the GCV of fuel that is natural gas, as defined in § 72.2 of this chapter, on a monthly basis, in the same manner as described for pipeline natural gas in section 2.3.4.1 of this appendix.

2.3.4.3 GCV of Other Gaseous Fuels

For gaseous fuels other than natural gas or pipeline natural gas, determine the GCV as specified in section 2.3.4.3.1, 2.3.4.3.2 or 2.3.4.3.3, as applicable. 2.3.4.3.1 For a gaseous fuel that is delivered in discrete shipments or lots, determine the GCV for each shipment or lot. The determination may be made by sampling each delivery or by sampling the supply tank after each delivery. For sampling of each delivery, use the highest GCV in the previous year's samples. For sampling from the tank after each delivery, use either the most recent GCV sample or the highest GCV in the previous year. 2.3.4.3.2 For any gaseous fuel that does not qualify as pipeline natural gas or natural gas and which is not delivered in shipments or lots which performs the required 720 hour test under section 2.3.5 of this appendix, and the results of the test demonstrate that the gaseous fuel has a low GCV variability, determine the GCV at least monthly. In calculations of hourly heat input for a unit, use either the most recent monthly sample or the highest fuel GCV from the previous year's samples. 2.3.4.3.3 For any other gaseous fuel, determine the GCV at least daily and use the actual fuel GCV in calculations of unit hourly heat input. If an online gas chromatograph or on-line calorimeter is used to determine fuel GCV each day, the owner or operator shall develop and implement a program to quality assure the data from the gas chromatograph or on-line calorimeter, in accordance with the manufacturer's recommended procedures. The quality assurance procedures shall be kept on-site, in a form suitable for inspection.

2.3.5 Demonstration of Fuel GCV Variability

(a) This demonstration is required of any fuel which does not qualify as pipeline natural gas or natural gas, and is not delivered only in shipments or lots. The demonstration data shall be used to determine whether daily or monthly sampling of the GCV of the gaseous fuel or blend is required.

(b) To make this demonstration, proceed as follows. Provide a minimum of 720 hours of data, indicating the GCV of the gaseous fuel or blend (in Btu/100 scf). The demonstration data shall be obtained using either: hourly sampling and analysis using the methods in section 2.3.4 to determine GCV of the fuel; an on-line gas chromatograph capable of determining fuel GCV on an hourly basis; or an on-line calorimeter. For gaseous fuel produced by a variable process, the data shall be representative of and include all process operating conditions including seasonal and yearly variations in process which may affect fuel GCV.

(c) The data shall be reduced to hourly averages. The mean GCV value and the standard deviation from the mean shall be calculated from the hourly averages. Specifically, the gaseous fuel is considered to have a low GCV variability, and monthly gas sampling for GCV may be used, if the mean value of the GCV multiplied by 1.075 is less than the sum of the mean value and one standard deviation. If the gaseous fuel or blend does not meet this requirement, then daily fuel sampling and analysis for GCV, using manual sampling, a gas chromatograph or an on-line calorimeter is required.

2.3.6 Demonstration of Fuel Sulfur Variability

(a) This demonstration is required for any fuel which does not qualify as pipeline natural gas or natural gas and is not delivered in shipments or lots. The results of the demonstration will be used to determine whether daily or hourly sampling for sulfur in the fuel is required. To make this demonstration, proceed as follows. Provide a minimum of 720 hours of data, indicating the total sulfur content (and hydrogen sulfide content, if needed to define a fuel as either pipeline natural gas or natural gas) of the gaseous fuel or blend (in gr/100 scf). The demonstration data shall be obtained using either manual hourly sampling or an on-line gas chromatograph capable of determining fuel total sulfur content (and, if applicable, H_2S content) on an hourly basis. For gaseous fuel produced by a variable process, additional data shall be provided which is representative of all process operating conditions including seasonal or annual variations which may affect fuel sulfur content.

(b) Reduce the data to hourly averages of the total sulfur content (and hydrogen sulfide content, if applicable) of the fuel. Then, calculate the mean value of the total sulfur content and standard deviation in order to determine whether daily sampling of the sulfur content of the gaseous fuel or blend is sufficient or whether hourly sampling with a gas chromatograph is required. Specifically, daily gas sampling and analysis for total sulfur content, using either manual sampling or an online gas chromatograph, shall be sufficient, provided that the standard deviation of the hourly average values from the mean value does not exceed 5.0 grains per 100 scf. If the gaseous fuel or blend does not meet this requirement, then hourly sampling of the fuel with a gas chromatograph and hourly reporting of the average sulfur content of the fuel is required.

2.4 * * *

2.4.1 Missing Data for Oil and Gas Samples

When fuel sulfur content, gross calorific value or, when necessary, density data are missing or invalid for an oil or gas sample taken according to the procedures in section 2.2.3, 2.2.4.1, 2.2.4.2, 2.2.4.3, 2.2.5, 2.2.6, 2.2.7, 2.3.3.1, 2.3.3.1.2, or 2.3.4 of this appendix, then substitute the maximum potential sulfur content, density, or gross calorific value of that fuel from Table D–6 of this appendix. Irrespective of which reporting option is selected (i.e., actual value, contract value or highest value from the previous year, the missing data values in Table D–6 shall be reported whenever the

results of a required sample of sulfur content, GCV or density is missing or invalid in the current calendar year. The substitute data value(s) shall be used until the next valid sample for the missing parameter(s) is obtained. Note that only actual sample results shall be used to determine the ''highest value from the previous year'' when that reporting option is used; missing data values shall not be used in the determination.

TABLE D–6.—MISSING DATA SUBSTITUTION PROCEDURES FOR SULFUR, DENSITY, AND GROSS CALORIFIC VALUE DATA

Parameter	Missing data substitution maximum potential value
Oil Sulfur Content	3.5 percent for residual oil, or 1.0 percent for diesel fuel.
Oil Density	8.5 lb/gal for residual oil, or 7.4 lb/gal for diesel fuel.
Oil GCV	19,500 Btu/lb for residual oil, or 20,000 Btu/lb for diesel fuel.
Gas Sulfur Content	0.3 gr/100 scf for pipeline natural gas, or 1.0 gr/100 scf for natural gas, or Twice the highest total sulfur content value recorded in the previous 30 days when sampling gaseous fuel daily or hourly.
Gas GCV/Heat Content	1100 Btu/scf for pipeline natural gas, natural gas or landfill gas, or 1500 for butane or refinery gas. 2100 Btu/scf for propane or any other gaseous fuel.

2.4.2 Whenever data are missing from any fuel flowmeter that is part of an excepted monitoring system under appendix D or E to this part, where the fuel flowmeter data are required to determine the amount of fuel combusted by the unit, use the procedures in sections 2.4.2.2 and 2.4.2.3 of this appendix to account for the flow rate of fuel combusted at the unit for each hour during the missing data period. In addition, a fuel flowmeter used for measuring fuel combusted by a peaking unit may use the simplified fuel flow missing data procedure in section 2.4.2.1 of this appendix.

2.4.2.1 Simplified Fuel Flow Missing Data for Peaking Units

If no fuel flow rate data are available for a fuel flowmeter system installed on a peaking unit (as defined in § 72.2 of this chapter), then substitute for each hour of missing data using the maximum potential fuel flow rate. The maximum potential fuel flow rate is the lesser of the following:

(a) The maximum fuel flow rate the unit is capable of combusting or (b) the maximum flow rate that the flowmeter can measure (i.e, upper range value of flowmeter leading to a unit).

2.4.2.2 * * *

2.4.2.3 For hours where two or more fuels are combusted, substitute the maximum hourly fuel flow rate measured and recorded by the flowmeter (or flowmeters, where fuel is recirculated) for the fuel for which data are missing at the corresponding load range recorded for each missing hour during the previous 720 hours when the unit combusted that fuel with any other fuel. For hours where no previous recorded fuel flow rate data are available for that fuel during the missing data period, calculate and substitute the maximum potential flow rate of that fuel for the unit as defined in section 2.4.2.2 of this appendix.

2.4.3 * * *

66. Appendix D to part 75 is further amended by:

a. Revising sections 3 through 3.2.1 and 3.2.3;

b. Removing section 3.2.4;

c. Revising sections 3.3 through 3.3.3;

d. Redesignating section 3.4 as 3.6 and revising the first sentence; and

e. Adding new sections 3.4 through 3.4.3 and sections 3.5 through 3.5.6 to read as follows:

3. Calculations

Calculate hourly SO_2 mass emission rate from combustion of oil fuel using the procedures in section 3.1 of this appendix. Calculate hourly SO_2 mass emission rate from combustion of gaseous fuel using the procedures in section 3.3 of this appendix. (Note: the SO_2 mass emission rates in sections 3.1 and 3.3 are calculated such that the rate, when multiplied by unit operating time, yields the hourly SO_2 mass emissions for a particular fuel for the unit.) Calculate hourly heat input rate for both oil and gaseous fuels using the procedures in section 3.4 of this appendix. Calculate total SO_2 mass emissions and heat input for each hour, each quarter and the year to date using the procedures under section 3.5 of this appendix. Where an oil flowmeter records volumetric flow rate, use the calculation procedures in section 3.2 of this appendix to calculate the mass flow rate of oil.

3.1 SO_2 Mass Emission Rate Calculation for Oil

3.1.1 Use Equation D–2 to calculate SO_2 mass emission rate per hour (lb/hr):

$$SO2_{rate\text{-}oil} = 2.0 \times OIL_{rate} \times \frac{\%S_{oil}}{100.0} \qquad \text{(Eq. D-2)}$$

Where:

$SO_{2rate\text{-}oil}$ = Hourly mass emission rate of SO_2 emitted from combustion of oil, lb/hr.

OIL_{rate} = Mass rate of oil consumed per hr during combustion, lb/hr.

$\%S_{oil}$ = Percentage of sulfur by weight measured in the sample.

2.0 = Ratio of lb SO_2/lb S.

3.1.2 Record the SO_2 mass emission rate from oil for each hour that oil is combusted.

3.2 Mass Flow Rate Calculation for Volumetric Oil Flowmeters

3.2.1 Where the oil flowmeter records volumetric flow rate rather than mass flow rate, calculate and record the oil mass flow rate for each hourly period using hourly oil flow rate measurements and the density or specific gravity of the oil sample.

* * * * *

3.2.3 Where density of the oil is determined by the applicable ASTM procedures from section 2.2.6 of this appendix, use Equation D–3 to calculate the rate of the mass of oil consumed (in lb/hr):

$$OIL_{rate} = V_{oil\text{-}rate} \times D_{oil} \qquad \text{(Eq. D-3)}$$

Where:

OIL_{rate} = Mass rate of oil consumed per hr, lb/hr.

$V_{oil\text{-}rate}$ = Volume rate of oil consumed per hr, measured in scf/hr, gal/hr, barrels/hr, or m^3/hr.

D_{oil} = Density of oil, measured in lb/scf, lb/gal, lb/barrel, or lb/m^3.

3.3 SO_2 Mass Emission Rate Calculation for Gaseous Fuels

3.3.1 Use Equation D–4 to calculate the SO_2 mass emission rate when using the optional gas sampling and analysis procedures in sections 2.3.1 and 2.3.2 of this appendix, or the required gas sampling and analysis procedures in section 2.3.3 of this appendix. Total sulfur content of a fuel must be determined using the procedures of 2.3.3.1.2 of this appendix:

$$SO2_{rate\text{-}gas} = \left(\frac{2}{7000}\right) \times GAS_{rate} \times S_{gas} \qquad \text{(Eq. D-4)}$$

Where:

$SO_{2rate\text{-}gas}$ = Hourly mass rate of SO_2 emitted due to combustion of gaseous fuel, lb/hr.

GAS_{rate} = Hourly metered flow rate of gaseous fuel combusted, 100 scf/hr.

S_{gas} = Sulfur content of gaseous fuel, in grain/100 scf.

2.0 = Ratio of lb SO_2/lb S.

7000 = Conversion of grains/100 scf to lb/100 scf.

3.3.2 Use Equation D–5 to calculate the SO_2 mass emission rate when using a default emission rate from section 2.3.1.1 or 2.3.2.1.1 of this appendix:

$$SO2_{rate} = ER \times HI_{rate} \qquad \text{(Eq. D-5)}$$

where:

SO_{2rate} = Hourly mass emission rate of SO_2 from combustion of a gaseous fuel, lb/hr.

ER = SO_2 emission rate from section 2.3.1.1 or 2.3.2.1.1, of this appendix, lb/mmBtu.

HI_{rate} = Hourly heat input rate of a gaseous fuel, calculated using procedures in section 3.4.1 of this appendix, in mmBtu/hr.

3.3.3 Record the SO_2 mass emission rate for each hour when the unit combusts a gaseous fuel.

3.4 Calculation of Heat Input Rate

3.4.1 Heat Input Rate for Gaseous Fuels

(a) Determine total hourly gas flow or average hourly gas flow rate with a fuel flowmeter in accordance with the requirements of section 2.1 of this appendix and the fuel GCV in accordance with the requirements of section 2.3.4 of this appendix. If necessary perform the 720-hour test under section 2.3.5 to determine the appropriate fuel GCV sampling frequency.

(b) Then, use Equation D–6 to calculate heat input rate from gaseous fuels for each hour.

$$HI_{rate\text{-}gas} = \frac{GAS_{rate} \times GCV_{gas}}{10^6} \qquad \text{(Eq. D-6)}$$

Where:

$HI_{rate\text{-}gas}$ = Hourly heat input rate from combustion of the gaseous fuel, mmBtu/hr.

GAS_{rate} = Average volumetric flow rate of fuel, for the portion of the hour in which the unit operated, 100 scf/hr.

GCV_{gas} = Gross calorific value of gaseous fuel, Btu/hr.

10^6 = Conversion of Btu to mmBtu.

(c) Note that when fuel flow is measured on an hourly totalized basis (e.g. a fuel flowmeter reports totalized fuel flow for each hour), before Equation D–6 can be used, the total hourly fuel usage must be converted from units of 100 scf to units of 100 scf/hr using Equation D–7:

$$GAS_{rate} = \frac{GAS_{unit}}{t} \qquad \text{(Eq. D-7)}$$

Where:

GAS_{rate} = Average volumetric flow rate of fuel for the portion of the hour in which the unit operated, 100 scf/hr.

GAS_{unit} = Total fuel combusted during the hour, 100 scf.

t = Unit operating time, hour or fraction of an hour (in equal increments that can range from one hundredth to one quarter of an hour, at the option of the owner or operator).

3.4.2 Heat Input Rate From the Combustion of Oil

(a) Determine total hourly oil flow or average hourly oil flow rate with a fuel flowmeter, in accordance with the requirements of section 2.1 of this appendix. Determine oil GCV according to the requirements of section 2.2 of this appendix.

Then, use Equation D–8 to calculate hourly heat input rate from oil for each hour:

$$HI_{rate\text{-}oil} = OIL_{rate} \frac{GCV_{oil}}{10^6} \qquad \text{(Eq. D-8)}$$

Where:

$HI_{rate\text{-}oil}$ = Hourly heat input rate from combustion of oil, mmBtu/hr.

OIL_{rate} = Mass rate of oil consumed per hour, as determined using procedures in section 3.2.3 of this appendix, in lb/hr, tons/hr, or kg/hr.

GCV_{oil} = Gross calorific value of oil, Btu/lb, Btu/ton, Btu/kg.

10^6 = Conversion of Btu to mmBtu.

(b) Note that when fuel flow is measured on an hourly totalized basis (e.g., a fuel flowmeter reports totalized fuel flow for each hour), before equation D–8 can be used, the total hourly fuel usage must be converted from units of lb to units of lb/hr, using equation D–9:

$$OIL_{rate} = \frac{OIL_{unit}}{t} \qquad \text{(Eq. D-9)}$$

Where:

OIL_{rate} = Average fuel flow rate for the portion of the hour which the unit operated in lb/hr.

OIL_{unit} = Total fuel combusted during the hour, lb.

t = Unit operating time, hour or fraction of an hour (in equal increments that can range from one hundredth to one quarter of an hour, at the option of the owner or operator).

3.4.3 Apportioning Heat Input Rate to Multiple Units

(a) Use the procedure in this section to apportion hourly heat input rate to two or more units using a single fuel flowmeter which supplies fuel to the units. (This procedure is not applicable to units calculating NO_X mass emissions using the provisions of subpart H of this part.) The designated representative may also petition the Administrator under § 75.66 to use this apportionment procedure to calculate SO_2 and CO_2 mass emissions.

(b) Determine total hourly fuel flow or flow rate through the fuel flowmeter supplying gas or oil fuel to the units. Convert fuel flow rates to units of 100 scf for gaseous fuels or to lb for oil, using the procedures of this appendix. Apportion the fuel to each unit separately based on hourly output of the unit in MW_e or 1000 lb of steam/hr (klb/hr) using Equation D–10 or D–11, as applicable:

$$GAS_{unit} = GAS_{meter}\left(\frac{U_{output}}{\sum_{all\text{-}units} U_{output}}\right) \qquad \text{(Eq. D-10)}$$

Where:

GAS_{unit} = Gas flow apportioned to a unit, 100 scf.

GAS_{meter} = Total gas flow through the fuel flowmeter, 100 scf.

U_{output} = Total unit output, MW or klb/hr.

$$OIL_{unit} = OIL_{meter}\left(\frac{U_{output}}{\sum_{all\text{-}units} U_{output}}\right) \quad \text{(Eq. D-11)}$$

Where:

OIL_{unit} = Oil flow apportioned to a unit, lb.

OIL_{meter} = Total oil flow through the fuel flowmeter, lb.

U_{output} = Total unit output in either MW_e or klb/hr.

(c) Use the total apportioned fuel flow calculated from Equation D–10 or D–11 to calculate the hourly unit heat input rate, using Equations D–6 and D–7 (for gas) or Equations D–8 and D–9 (for oil).

3.5 Conversion of Hourly Rates to Hourly, Quarterly and Year to Date Totals

3.5.1 Hourly SO_2 Mass Emissions From the Combustion of All Fuels

Determine the total mass emissions for each hour from the combustion of all fuels using Equation D–12:

$$M_{SO2\text{-}hr} = \sum_{all\text{-}fuels} SO2_{rate\text{-}i}\, t_i \quad \text{(Eq. D-12)}$$

Where:

$M_{SO2\text{-}hr}$ = Total mass of SO_2 emissions from all fuels combusted during the hour, lb.

$SO_{2rate\text{-}i}$ = SO_2 mass emission rate for each type of gas or oil fuel combusted during the hour, lb/hr.

t_i = Time each gas or oil fuel was combusted for the hour (fuel usage time), fraction of an hour (in equal increments that can range from one hundredth to one quarter of an hour, at the option of the owner or operator).

3.5.2 Quarterly Total SO_2 Mass Emissions

Sum the hourly SO_2 mass emissions in lb as determined from Equation D–12 for all hours in a quarter using Equation D–13:

$$M_{SO2\text{-}qtr} = \frac{1}{2000}\sum_{all\text{-}hours\text{-}in\text{-}qtr} M_{SO2\text{-}hr} \quad \text{(Eq. D-13)}$$

Where:

$M_{SO2\text{-}qtr}$ = Total mass of SO_2 emissions from all fuels combusted during the quarter, tons.

$M_{SO2\text{-}hr}$ = Hourly SO_2 mass emissions determined using Equation D–12, lb.

2000= Conversion factor from lb to tons.

3.5.3 Year to Date SO_2 Mass Emissions

Calculate and record SO_2 mass emissions in the year to date using Equation D–14:

$$M_{SO2\text{-}YTD} = \sum_{q=1}^{current\text{-}quarter} M_{SO2\text{-}qtr} \quad \text{(Eq. D-14)}$$

Where:

$M_{SO2\text{-}YTD}$ = Total SO_2 mass emissions for the year to date, tons.

$M_{SO2\text{-}qtr}$ = Total SO_2 mass emissions for the quarter, tons.

3.5.4 Hourly Total Heat Input from the Combustion of all Fuels

Determine the total heat input in mmBtu for each hour from the combustion of all fuels using Equation D–15:

$$HI_{hr} = \sum_{all\text{-}fuels} HI_{rate\text{-}i}\, t_i \quad \text{(Eq. D-15)}$$

Where:

HI_{hr} = Total heat input from all fuels combusted during the hour, mmBtu.

$HI_{rate\text{-}i}$ =Heat input rate for each type of gas or oil combusted during the hour, mmBtu/hr.

t_i = Time each gas or oil fuel was combusted for the hour (fuel usage time), fraction of an hour (in equal increments that can range from one hundredth to one quarter of an hour, at the option of the owner or operator).

3.5.5 Quarterly Heat Input

Sum the hourly heat input values determined from equation D–15 for all hours in a quarter using Equation D–16:

$$HI_{qtr} = \frac{1}{2000}\sum_{all\text{-}hours\text{-}in\text{-}qtr} HI_{hr} \quad \text{(Eq. D-16)}$$

Where:

HI_{qtr} = Total heat input from all fuels combusted during the quarter, mmBtu.

HI_{hr} = Hourly heat input determined using Equation D–15, mmBtu.

3.5.6 Year-to-Date Heat Input

Calculate and record the total heat input in the year to date using Equation D–17.

$$HI_{YTD} = \sum_{q=1}^{current\text{-}quarter} HI_{qtr} \quad \text{(Eq. D-17)}$$

HI_{YTD} = Total heat input for the year to date, mmBtu.

HI_{qtr} = Total heat input for the quarter, mmBtu.

3.6 Records and Reports

Calculate and record quarterly and cumulative SO_2 mass emissions and heat input for each calendar quarter using the procedures and equations of section 3.5 of this appendix. * * *

67. Appendix E to part 75 is amended by revising sections 2.4.2, 2.4.3, 2.4.4, 2.5.4 and 2.5.5 to read as follows:

Appendix E to Part 75—Optional NO_X Emissions Estimation Protocol for Gas-Fired Peaking Units and Oil-Fired Peaking Units

* * * * *

2. Procedure

* * * * *

2.4 Procedures for Determining Hourly NO_X Emission Rate

* * * * *

2.4.2 Use the graph of the baseline correlation results (appropriate for the fuel or fuel combination) to determine the NO_X emissions rate (lb/mmBtu) corresponding to the heat input rate (mmBtu/hr). Input this correlation into the data acquisition and handling system for the unit. Linearly interpolate to 0.1 mmBtu/hr heat input rate and 0.01 lb/mmBtu NO_X (0.001 lb/mmBtu NO_X after April 1, 2000). For each type of fuel, calculate NO_X emission rate using the baseline correlation results from the most recent test with that fuel, beginning with the date and hour of the completion of the most recent test.

2.4.3 To determine the NO_X emission rate for a unit co-firing fuels that has not been tested for that combination of fuels, interpolate between the NO_X emission rate for each fuel as follows. Determine the heat input rate for the hour (in mmBtu/hr) for each fuel and select the corresponding NO_X emission rate for each fuel on the appropriate graph. (When a fuel is combusted for a partial

hour, determine the fuel usage time for each fuel and determine the heat input rate from each fuel as if that fuel were combusted at that rate for the entire hour in order to select the corresponding NO_X emission rate.) Calculate the total heat input to the unit in mmBtu for the hour from all fuel combusted using Equation E–1. Calculate a Btu-weighted average of the emission rates for all fuels using Equation E–2 of this appendix. For each type of fuel, calculate NO_X emission rate using the baseline correlation results from the most recent test with that fuel, beginning with the date and hour of the completion of the most recent test.

2.4.4 For each hour, record the critical quality assurance parameters, as identified in the monitoring plan, and as required by section 2.3 of this appendix from the date and hour of the completion of the most recent test for each type of fuel.

2.5 Missing Data Procedures

* * * * *

2.5.4 Substitute missing data from a fuel flowmeter using the procedures in section 2.4.2 of appendix D to this part.

2.5.5 Substitute missing data for gross calorific value of fuel using the procedures in sections 2.4.1 of appendix D to this part.

68. Appendix E to part 75 is further amended by revising sections 3.1, 3.3.1, and 3.3.4 to read as follows:

3. Calculations

3.1 Heat Input

Calculate the total heat input by summing the product of heat input rate and fuel usage time of each fuel, as in the following equation:

$$H_T = HI_{fuel1}t_1 + HI_{fuel2}t_2 + HI_{fuel3}t_3 + \ldots + HI_{lastfuel}t_{last} \qquad \text{(Eq. E-1)}$$

Where:

H_T = Total heat input of fuel flow or a combination of fuel flows to a unit, mmBtu.

$HI_{fuel\ 1,2,3,\ldots last}$ = Heat input rate from each fuel, in mmBtu/hr as determined using Equation F–19 or F–20 in section 5.5 of appendix F to this part, mmBtu/hr.

$t_{1,2,3\ldots last}$ = Fuel usage time for each fuel (rounded up to the nearest fraction of an hour (in equal increments that can range from one hundredth to one quarter of an hour, at the option of the owner or operator)).

* * * * *

3.3 * * *

3.3.1 Conversion from Concentration to Emission Rate

Convert the NO_X concentrations (ppm) and O_2 concentrations to NO_X emission rates (to the nearest 0.01 lb/mmBtu for tests performed prior to April 1, 2000, or to the nearest 0.001 lb/mmBtu for tests performed on and after April 1, 2000), according to the appropriate one of the following equations: F–5 in appendix F to this part for dry basis concentration measurements or 19–3 in Method 19 of appendix A to part 60 of this chapter for wet basis concentration measurements.

* * * * *

3.3.4 Average NO_X Emission Rate During Co-firing of Fuels

$$E_h = \frac{\sum_{f=1}^{\text{all fuels}} \left(E_f \times HI_f t_f\right)}{H_T} \qquad \text{(Eq. E-2)}$$

Where:

E_h = NO_X emission rate for the unit for the hour, lb/mmBtu.

E_f = NO_X emission rate for the unit for a given fuel at heat input rate HI_f, lb/mmBtu.

HI_f = Heat input rate for the hour for a given fuel, during the fuel usage time, as determined using Equation F–19 or F–20 in section 5.5 of appendix F to this part, mmBtu/hr.

H_T = Total heat input for all fuels for the hour from Equation E–1.

t_f = Fuel usage time for each fuel (rounded up to the nearest fraction of an hour (in equal increments that can range from one hundredth to one quarter of an hour, at the option of the owner or operator)).

Note: For hours where a fuel is combusted for only part of the hour, use the fuel flow rate or mass flow rate during the fuel usage time, instead of the total fuel flow or mass flow during the hour, when calculating heat input rate using Equation F–19 or F–20.

69. Appendix F to part 75 is amended by revising sections 2, 2.1, 2.2, 2.3, and 2.4 to read as follows:

Appendix F to Part 75—Conversion Procedures

* * * * *

2. Procedures for SO_2 Emissions

Use the following procedures to compute hourly SO_2 mass emission rate (in lb/hr) and quarterly and annual SO_2 total mass emissions (in tons). Use the procedures in Method 19 in appendix A to part 60 of this chapter to compute hourly SO_2 emission rates (in lb/mmBtu) for qualifying Phase I technologies. When computing hourly SO_2 emission rate in lb/mmBtu, a minimum concentration of 5.0 percent CO_2 and a maximum concentration of 14.0 percent O_2 may be substituted for measured diluent gas concentration values at boilers during hours when the hourly average concentration of CO_2 is less than 5.0 percent CO_2 or the hourly average concentration of O_2 is greater than 14.0 percent O_2.

2.1 When measurements of SO_2 concentration and flow rate are on a wet basis, use the following equation to compute hourly SO_2 mass emission rate (in lb/hr):

$$E_h = KC_hQ_h \qquad \text{(Eq. F-1)}$$

Where:

E_h = Hourly SO_2 mass emission rate during unit operation, lb/hr.

$K = 1.660 \times 10^{-7}$ for SO_2, (lb/scf)/ppm.

C_h = Hourly average SO_2 concentration during unit operation, stack moisture basis, ppm.

Q_h = Hourly average volumetric flow rate during unit operation, stack moisture basis, scfh.

2.2 When measurements by the SO_2 pollutant concentration monitor are on a dry basis and the flow rate monitor measurements are on a wet basis, use the following equation to compute hourly SO_2 mass emission rate (in lb/hr):

$$E_h = K\,C_{hp}Q_{hs}\frac{\left(100 - \%H_2O\right)}{100} \qquad \text{(Eq. F-2)}$$

where:

E_h = Hourly SO_2 mass emission rate during unit operation, lb/hr.

K = 1.660 x 10^{-7} for SO_2, (lb/scf)/ppm.

C_{hp} = Hourly average SO_2 concentration during unit operation, ppm (dry).

Q_{hs} = Hourly average volumetric flow rate during unit operation, scfh as measured (wet).

$\%H_2O$ = Hourly average stack moisture content during unit operation, percent by volume.

2.3 Use the following equations to calculate total SO_2 mass emissions for each calendar quarter (Equation F–3) and for each calendar year (Equation F–4), in tons:

$$E_q = \frac{\sum_{h=i}^{n} E_h t_h}{2000} \qquad \text{(Eq. F-3)}$$

Where:

E_q = Quarterly total SO_2 mass emissions, tons.

E_h = Hourly SO_2 mass emission rate, lb/hr.

t_h = Unit operating time, hour or fraction of an hour (in equal increments that can range from one hundredth to one quarter of an hour, at the option of the owner or operator).
n = Number of hourly SO_2 emissions values during calendar quarter.
2000 = Conversion of 2000 lb per ton.

$$E_a = \sum_{q=1}^{4} E_q \qquad \text{(Eq. F-4)}$$

Where:

E_a = Annual total SO_2 mass emissions, tons.
E_q = Quarterly SO_2 mass emissions, tons.
q = Quarters for which E_q are available during calendar year.

2.4 Round all SO_2 mass emission rates and totals to the nearest tenth.

70. Appendix F to part 75 is further amended by revising sections 3.3.2, 3.3.3, 3.3.4, 3.4, and 3.5 to read as follows:

3. Procedures for NO_X Emission Rate

* * * * *

3.3 * * *

3.3.2 E = Pollutant emissions during unit operation, lb/mmBtu.
3.3.3 C_h = Hourly average pollutant concentration during unit operation, ppm.
3.3.4 $\%O_2$, $\%CO_2$ = Oxygen or carbon dioxide volume during unit operation (expressed as percent O_2 or CO_2). A minimum concentration of 5.0 percent CO_2 and a maximum concentration of 14.0 percent O_2 may be substituted for measured diluent gas concentration values at boilers during hours when the hourly average concentration of CO_2 is < 5.0 percent CO_2 or the hourly average concentration of O_2 is > 14.0 percent O_2. A minimum concentration of 1.0 percent CO_2 and a maximum concentration of 19.0 percent O_2 may be substituted for measured diluent gas concentration values at stationary gas turbines during hours when the hourly average concentration of CO_2 is < 1.0 percent CO_2 or the hourly average concentration of O_2 is > 19.0 percent O_2.

* * * * *

3.4 Use the following equations to calculate the average NO_X emission rate for each calendar quarter (Equation F–9) and the average emission rate for the calendar year (Equation F–10), in lb/mmBtu:

$$E_q = \sum_{i=1}^{n} \frac{E_i}{n} \qquad \text{(Eq. F-9)}$$

Where:

E_q = Quarterly average NO_X emission rate, lb/mmBtu.
E_i = Hourly average NO_X emission rate during unit operation, lb/mmBtu.
n = Number of hourly rates during calendar quarter.

$$E_a = \sum_{i=1}^{m} \frac{E_i}{m} \qquad \text{(Eq. F-10)}$$

Where:

E_a = Average NO_X emission rate for the calendar year, lb/mmBtu.
E_i = Hourly average NO_X emission rate during unit operation, lb/mmBtu.
m = Number of hourly rates for which E_i is available in the calendar year.

3.5 Round all NO_X emission rates to the nearest 0.01 lb/mmBtu prior to April 1, 2000, and to the nearest 0.001 lb/mmBtu on and after April 1, 2000.

71. Appendix F to part 75 is further amended by revising sections 4.1, 4.2, 4.3, 4.4, and 4.4.1 to read as follows:

4. Procedures for CO_2 Mass Emissions

* * * * *

4.1 When CO_2 concentration is measured on a wet basis, use the following equation to calculate hourly CO_2 mass emissions rates (in tons/hr):

$$E_h = KC_hQ_h \qquad \text{(Eq. F-11)}$$

Where:

E_h = Hourly CO_2 mass emission rate during unit operation, tons/hr.
K = 5.7 X 10^{-7} for CO_2, (tons/scf) /$\%CO_2$.
C_h = Hourly average CO_2 concentration during unit operation, wet basis, percent CO_2. For boilers, a minimum concentration of 5.0 percent CO_2 may be substituted for the measured concentration when the hourly average concentration of CO_2 is < 5.0 percent CO_2, provided that this minimum concentration of 5.0 percent CO_2 is also used in the calculation of heat input for that hour. For stationary gas turbines, a minimum concentration of 1.0 percent CO_2 may be substituted for measured diluent gas concentration values during hours when the hourly average concentration of CO_2 is < 1.0 percent CO_2, provided that this minimum concentration of 1.0 percent CO_2 is also used in the calculation of heat input for that hour.
Q_h = Hourly average volumetric flow rate during unit operation, wet basis, scfh.

$$CO_{2d} = 100\frac{F_c}{F}\frac{20.9 - O_{2d}}{20.9} \qquad \text{(Eq. F-14a)}$$

4.2 When CO_2 concentration is measured on a dry basis, use Equation F–2 to calculate the hourly CO_2 mass emission rate (in tons/hr) with a K-value of 5.7 x 10^{-7} (tons/scf) percent CO_2, where E_h = hourly CO_2 mass emission rate, tons/hr and C_{hp} = hourly average CO_2 concentration in flue, dry basis, percent CO_2.

4.3 Use the following equations to calculate total CO_2 mass emissions for each calendar quarter (Equation F–12) and for each calendar year (Equation F–13):

$$E_{CO_2q} = \sum_{h=1}^{H_R} E_h t_h \qquad \text{(Eq. F-12)}$$

Where:

E_{CO2q} = Quarterly total CO_2 mass emissions, tons.
E_h = Hourly CO_2 mass emission rate, tons/hr.
t_h=Unit operating time, in hours or fraction of an hour (in equal increments that can range from one hundredth to one quarter of an hour, at the option of the owner or operator).
H_R = Number of hourly CO_2 mass emission rates available during calendar quarter.

$$E_{CO_2a} = \sum_{q=1}^{4} E_{CO_2q} \qquad \text{(Eq. F-13)}$$

Where:

E_{CO2a} = Annual total CO_2 mass emission,
E_{CO2q} = Quarterly total CO_2 mass emissions, tons.
q = Quarters for which E_{CO2q} are available during calendar year.

4.4 For an affected unit, when the owner or operator is continuously monitoring O_2 concentration (in percent by volume) of flue gases using an O_2 monitor, use the equations and procedures in section 4.4.1 and 4.4.2 of this appendix to determine hourly CO_2 mass emissions (in tons).

4.4.1 Use appropriate F and F_c factors from section 3.3.5 of this appendix in one of the following equations (as applicable) to determine hourly average CO_2 concentration of flue gases (in percent by volume):

CO_{2d} = Hourly average CO_2 concentration during unit operation, percent by volume, dry basis.

F, F_c = F-factor or carbon-based F_c-factor from section 3.3.5 of this appendix.

20.9 = Percentage of O_2 in ambient air.

O_{2d} = Hourly average O_2 concentration during unit operation, percent by volume, dry basis. For boilers, a maximum concentration of 14.0 percent O_2 may be substituted for the measured concentration when the hourly average concentration of O_2 is > 14.0 percent O_2, provided that this maximum concentration of 14.0 percent O_2 is also used in the calculation of heat input for that hour. For stationary gas turbines, a maximum concentration of 19.0 percent O_2 may be substituted for measured diluent gas concentration values during hours when the hourly average concentration of O_2 is > 19.0 percent O_2, provided that this maximum concentration of 19.0 percent O_2 is also used in the calculation of heat input for that hour.

$$CO_{2w} = \frac{100}{20.9}\ \frac{F_c}{F}\left[20.9\left(\frac{100 - \%H_2O}{100}\right) - O_{2w}\right] \qquad \text{(Eq. F-14b)}$$

Where:

CO_{2w} = Hourly average CO_2 concentration during unit operation, percent by volume, wet basis.

O_{2w} = Hourly average O_2 concentration during unit operation, percent by volume, wet basis. For boilers, a maximum concentration of 14.0 percent O_2 may be substituted for the measured concentration when the hourly average concentration of O_2 is > 14.0 percent O_2, provided that this maximum concentration of 14.0 percent O_2 is also used in the calculation of heat input for that hour. For stationary gas turbines, a maximum concentration of 19.0 percent O_2 may be substituted for measured diluent gas concentration values during hours when the hourly average concentration of O_2 is > 19.0 percent O_2, provided that this maximum concentration of 19.0 percent O_2 is also used in the calculation of heat input for that hour.

F, F_c = F-factor or carbon-based F_c-factor from section 3.3.5 of this appendix.

20.9 = Percentage of O_2 in ambient air.

$\%H_2O$ = Moisture content of gas in the stack, percent.

* * * * *

72. Appendix F to part 75 is amended by revising sections 5 through 5.2.4; adding sections 5.3 through 5.3.2; revising sections 5.5, 5.5.1 and 5.5.2; and by adding new sections 5.6 through 5.6.2 and 5.7 and by removing and revising section 5.4 to read as follows:

5. Procedures for Heat Input

Use the following procedures to compute heat input rate to an affected unit (in mmBtu/hr or mmBtu/day):

5.1 Calculate and record heat input rate to an affected unit on an hourly basis, except as provided in sections 5.5 through 5.5.7. The owner or operator may choose to use the provisions specified in § 75.16(e) or in section 2.1.2 of appendix D to this part in conjunction with the procedures provided in sections 5.6 through 5.6.2 to apportion heat input among each unit using the common stack or common pipe header.

5.2 For an affected unit that has a flow monitor (or approved alternate monitoring system under subpart E of this part for measuring volumetric flow rate) and a diluent gas (O_2 or CO_2) monitor, use the recorded data from these monitors and one of the following equations to calculate hourly heat input rate (in mmBtu/hr).

5.2.1 When measurements of CO_2 concentration are on a wet basis, use the following equation:

$$HI = Q_w\ \frac{1}{F_c}\ \frac{\%CO_{2w}}{100} \qquad \text{(Eq. F-15)}$$

Where:

HI = Hourly heat input rate during unit operation, mmBtu/hr.

Q_w = Hourly average volumetric flow rate during unit operation, wet basis, scfh.

F_c = Carbon-based F-factor, listed in section 3.3.5 of this appendix for each fuel, scf/mmBtu.

$\%CO_{2w}$ = Hourly concentration of CO_2 during unit operation, percent CO_2 wet basis. For boilers, a minimum concentration of 5.0 percent CO_2 may be substituted for the measured concentration when the hourly average concentration of CO_2 is < 5.0 percent CO_2, provided that this minimum concentration of 5.0 percent CO_2 is also used in the calculation of CO_2 mass emissions for that hour. For stationary gas turbines, a minimum concentration of 1.0 percent CO_2 may be substituted for measured diluent gas concentration values during hours when the hourly average concentration of CO_2 is < 1.0 percent CO_2, provided that this minimum concentration of 1.0 percent CO_2 is also used in the calculation of CO_2 mass emissions for that hour.

5.2.2 When measurements of CO_2 concentration are on a dry basis, use the following equation:

$$HI = Q_h\left[\frac{(100 - \%H_2O)}{100F_c}\right]\left(\frac{\%CO_{2d}}{100}\right) \qquad \text{(Eq. F-16)}$$

Where:

HI = Hourly heat input rate during unit operation, mmBtu/hr.

Q_h = Hourly average volumetric flow rate during unit operation, wet basis, scfh.

F_c = Carbon-based F-Factor, listed in section 3.3.5 of this appendix for each fuel, scf/mmBtu.

$\%CO_{2d}$ = Hourly concentration of CO_2 during unit operation, percent CO_2 dry basis. For boilers, a minimum concentration of 5.0 percent CO_2 may be substituted for the measured concentration when the hourly average concentration of CO_2 is < 5.0 percent CO_2, provided that this minimum concentration of 5.0 percent CO_2 is also used in the calculation of CO_2 mass emissions for that hour. For stationary gas turbines, a minimum concentration of 1.0 percent CO_2 may be substituted for measured diluent gas concentration values during hours when the hourly average concentration of CO_2 is < 1.0 percent CO_2, provided that this minimum concentration of 1.0 percent CO_2 is also used in the calculation of CO_2 mass emissions for that hour.

$\%H_2O$ = Moisture content of gas in the stack, percent.

5.2.3 When measurements of O_2 concentration are on a wet basis, use the following equation:

$$HI = Q_w \frac{1}{F} \frac{\left[(20.9/100)(100 - \%H_2O) - \%O_{2w}\right]}{20.9} \qquad \text{(Eq. F-17)}$$

Where:

HI = Hourly heat input rate during unit operation, mmBtu/hr.

Q_w = Hourly average volumetric flow rate during unit operation, wet basis, scfh.

F = Dry basis F-factor, listed in section 3.3.5 of this appendix for each fuel, dscf/mmBtu.

$\%O_{2w}$ = Hourly concentration of O_2 during unit operation, percent O_2 wet basis. For boilers, a maximum concentration of 14.0 percent O_2 may be substituted for the measured concentration when the hourly average concentration of O_2 is > 14.0 percent O_2, provided that this maximum concentration of 14.0 percent O_2 is also used in the calculation of CO_2 mass emissions for that hour. For stationary gas turbines, a maximum concentration of 19.0 percent O_2 may be substituted for measured diluent gas concentration values during hours when the hourly average concentration of O_2 is > 19.0 percent O_2, provided that this maximum concentration of 19.0 percent O_2 is also used in the calculation of CO_2 mass emissions for that hour.

$\%H_2O$ = Hourly average stack moisture content, percent by volume.

5.2.4 When measurements of O_2 concentration are on a dry basis, use the following equation:

$$HI = Q_w \left[\frac{(100 - \%H_2O)}{100\ F}\right]\left[\frac{(20.9 - \%O_{2d})}{20.9}\right] \qquad \text{(Eq. F-18)}$$

Where:

HI = Hourly heat input rate during unit operation, mmBtu/hr.

Q_w = Hourly average volumetric flow during unit operation, wet basis, scfh.

F = Dry basis F-factor, listed in section 3.3.5 of this appendix for each fuel, dscf/mmBtu.

$\%H_2O$ = Moisture content of the stack gas, percent.

$\%O_{2d}$ = Hourly concentration of O_2 during unit operation, percent O_2 dry basis. For boilers, a maximum concentration of 14.0 percent O_2 may be substituted for the measured concentration when the hourly average concentration of O_2 is > 14.0 percent O_2, provided that this maximum concentration of 14.0 percent O_2 is also used in the calculation of CO_2 mass emissions for that hour. For stationary gas turbines, a maximum concentration of 19.0 percent O_2 may be substituted for measured diluent gas concentration values during hours when the hourly average concentration of O_2 is > 19.0 percent O_2, provided that this maximum concentration of 19.0 percent O_2 is also used in the calculation of CO_2 mass emissions for that hour.

5.3 *Heat Input Summation (for Heat Input Determined Using a Flow Monitor and Diluent Monitor)*

5.3.1 Calculate total quarterly heat input for a unit or common stack using a flow monitor and diluent monitor to calculate heat input, using the following equation:

$$HI_q = \sum_{hour=1}^{n} HI_i t_i \qquad \text{(Eq. F-18a)}$$

Where:

HI_q = Total heat input for the quarter, mmBtu.

HI_i = Hourly heat input rate during unit operation, using Equation F–15, F–16, F–17, or F–18, mmBtu/hr.

t_i = Hourly operating time for the unit or common stack, hour or fraction of an hour (in equal increments that can range from one hundredth to one quarter of an hour, at the option of the owner or operator).

5.3.2 Calculate total cumulative heat input for a unit or common stack using a flow monitor and diluent monitor to calculate heat input, using the following equation:

$$HI_c = \sum_{q=1}^{\text{the current quarter}} HI_q \qquad \text{(Eq. F-18b)}$$

Where:

HI_c = Total heat input for the year to date, mmBtu.

HI_q = Total heat input for the quarter, mmBtu.

5.4 [Reserved]

5.5 For a gas-fired or oil-fired unit that does not have a flow monitor and is using the procedures specified in appendix D to this part to monitor SO_2 emissions or for any unit using a common stack for which the owner or operator chooses to determine heat input by fuel sampling and analysis, use the following procedures to calculate hourly heat input rate in mmBtu/hr. The procedures of section 5.5.3 of this appendix shall not be used to determine heat input from a coal unit that is required to comply with the provisions of this part for monitoring, recording, and reporting NO_X mass emissions under a State or federal NO_X mass emission reduction program.

5.5.1(a) When the unit is combusting oil, use the following equation to calculate hourly heat input rate:

$$HI_o = M_o \frac{GCV_o}{10^6} \qquad \text{(Eq. F-19)}$$

Where:

HI_o = Hourly heat input rate from oil, mmBtu/hr.

M_o = Mass rate of oil consumed per hour, as determined using procedures in appendix D to this part, in lb/hr, tons/hr, or kg/hr.

GCV_o = Gross calorific value of oil, as measured by ASTM D240–87 (Reapproved 1991), ASTM D2015–91, or ASTM D2382–88 for each oil sample under section 2.2 of appendix D to this part, Btu/unit mass (incorporated by reference under § 75.6).

10^6 = Conversion of Btu to mmBtu.

(b) When performing oil sampling and analysis solely for the purpose of the missing data procedures in § 75.36, oil samples for measuring GCV may be taken weekly, and the procedures specified in appendix D to this part for determining the mass rate of oil consumed per hour are optional.

5.5.2 When the unit is combusting gaseous fuels, use the following equation to calculate heat input rate from gaseous fuels for each hour:

$$HI_g = \frac{\left(Q_g \times GCV_g\right)}{10^6} \qquad \text{(Eq. F-20)}$$

Where:

HIg = Hourly heat input rate from gaseous fuel, mmBtu/hour.

Q_g = Metered flow rate of gaseous fuel combusted during unit operation, hundred cubic feet.

GCV_g = Gross calorific value of gaseous fuel, as determined by sampling (for each delivery for gaseous fuel in lots, for each daily gas sample for gaseous fuel delivered by pipeline, for each hourly average for gas measured hourly with a gas chromatograph, or for each monthly sample of pipeline natural gas, or as verified by the contractual supplier at least once every month pipeline natural gas is combusted, as specified in section 2.3 of appendix D to this part) using ASTM D1826–88, ASTM D3588–91, ASTM D4891–89, GPA Standard 2172–86 ''Calculation of Gross Heating Value, Relative Density and Compressibility Factor for Natural Gas Mixtures from Compositional Analysis,'' or GPA Standard 2261–90 ''Analysis for Natural Gas and Similar Gaseous Mixtures by Gas Chromatography,'' Btu/100 scf (incorporated by reference under § 75.6).

10^6 = Conversion of Btu to mmBtu.

* * * * *

5.6 *Heat Input Rate Apportionment for Units Sharing a Common Stack or Pipe*

5.6.1 Where applicable, the owner or operator of an affected unit that determines heat input rate at the unit level by apportioning the heat input monitored at a common stack or common pipe using megawatts should apportion the heat input rate using the following equation:

$$HI_i = HI_{CS}\left(\frac{t_{CS}}{t_i}\right)\left[\frac{MW_i t_i}{\sum_{i=1}^{n} MW_i t_i}\right] \qquad \text{(Eq. F-21a)}$$

Where:

HI_i = Heat input rate for a unit, mmBtu/hr.

HI_{cs} = Heat input rate at the common stack or pipe, mmBtu/hr.

MW_i = Gross electrical output, MWe.

t_i = Operating time at a particular unit, hour or fraction of an hour (in equal increments that can range from one hundredth to one quarter of an hour, at the option of the owner or operator).

t_{CS} = Operating time at common stack, hour or fraction of an hour (in equal increments that can range from one hundredth to one quarter of an hour, at the option of the owner or operator).

n = Total number of units using the common stack.

i = Designation of a particular unit.

5.6.2 Where applicable, the owner or operator of an affected unit that determines the heat input rate at the unit level by apportioning the heat input rate monitored at a common stack or common pipe using steam load should apportion the heat input rate using the following equation:

$$HI_i = HI_{CS}\left(\frac{t_{CS}}{t_i}\right)\left[\frac{SF_i t_i}{\sum_{i=1}^{n} SF_i t_i}\right] \qquad \text{(Eq. F-21b)}$$

Where:

HI_i = Heat input rate for a unit, mmBtu/hr.
HI_{CS} = Heat input rate at the common stack or pipe, mmBtu/hr.
SF = Gross steam load, lb/hr.
t_i = Operating time at a particular unit, hour or fraction of an hour (in equal increments that can range from one hundredth to one quarter of an hour, at the option of the owner or operator).
t_{CS} = Operating time at common stack, hour or fraction of an hour (in equal increments that can range from one hundredth to one quarter of an hour, at the option of the owner or operator).
n = Total number of units using the common stack.
i = Designation of a particular unit.

5.7 *Heat Input Rate Summation for Units with Multiple Stacks or Pipes*

The owner or operator of an affected unit that determines the heat input rate at the unit level by summing the heat input rates monitored at multiple stacks or multiple pipes should sum the heat input rates using the following equation:

$$HI_{Unit} = \frac{\sum_{s=1}^{n} HI_s t_s}{t_{Unit}} \qquad \text{(Eq. F-21c)}$$

Where:

HI_{Unit} = Heat input rate for a unit, mmBtu/hr.
HI_s = Heat input rate for each stack or duct leading from the unit, mmBtu/hr.
t_{Unit} = Operating time for the unit, hour or fraction of the hour (in equal increments that can range from one hundredth to one quarter of an hour, at the option of the owner or operator).
t_s = Operating time during which the unit is exhausting through the stack or duct, hour or fraction of the hour (in equal increments that can range from one hundredth to one quarter of an hour, at the option of the owner or operator).

73. Appendix F is further amended by revising section 7 to read as follows:

7. Procedures for SO_2 Mass Emissions at Units With SO_2 Continuous Emission Monitoring Systems During the Combustion of Pipeline Natural Gas or Natural Gas

The owner or operator shall use the following equation to calculate hourly SO_2 mass emissions as allowed for units with SO_2 continuous emission monitoring systems if, during the combustion of gaseous fuel that meets the definition of pipeline natural gas or natural gas in § 72.2 of this chapter, SO_2 emissions are determined in accordance with § 75.11(e)(1).

$$E_h = (ER)\,(HI) \qquad \text{(Eq. F-23)}$$

Where:

E_h = Hourly SO_2 mass emissions, lb/hr.
ER = Applicable SO_2 default emission rate from section 2.3.1.1 or 2.3.2.1.1 of appendix D to this part, lb/mmBtu.
HI = Hourly heat input, as determined using the procedures of section 5.2 of this appendix.

74. Appendix F is further amended by correcting section 8 to read as follows:

8. Procedures for NO_X Mass Emissions

The owner or operator of a unit that is required to monitor, record, and report NO_X mass emissions under a State or federal NO_X mass emission reduction program must use the procedures in section 8.1, 8.2, or 8.3, as applicable, to account for hourly NO_X mass emissions, and the procedures in section 8.4 to account for quarterly, seasonal, and annual NO_X mass emissions to the extent that the provisions of subpart H of this part are adopted as requirements under such a program.

75. Appendix G to part 75 is amended by revising the paragraph defining the term ''W_c'' that follows Equation G–1 and by revising the paragraph defining the term ''Fc'' that follows Equation G–4 to read as follows:

Appendix G to Part 75—Determination of CO_2 Emissions

* * * * *

2. Procedures for Estimating CO_2 Emissions From Combustion

* * * * *

2.1 * * *

(Eq. G–1)

Where:

* * * * *

W_c = Carbon burned, lb/day, determined using fuel sampling and analysis and fuel feed rates. Collect at least one fuel sample during each week that the unit combusts coal, one sample per each shipment or delivery for oil and diesel fuel, one fuel sample for each delivery for gaseous fuel in lots, one sample per day or per hour (as applicable) for each gaseous fuel that is required to be sampled daily or hourly for gross calorific value under section 2.3.5.6 of appendix D to this part, and one sample per month for each gaseous fuel that is required to be sampled monthly for gross calorific value under section 2.3.4.1 or 2.3.4.2 of appendix D to this part. Collect coal samples from a location in the fuel handling system that provides a sample representative of the fuel bunkered or consumed during the week. Determine the carbon content of each fuel sampling using one of the following methods: ASTM D3178–89 or ASTM D5373–93 for coal; ASTM D5291–92 ''Standard Test Methods for Instrumental Determination of Carbon, Hydrogen, and Nitrogen in Petroleum Products and Lubricants,'' ultimate analysis of oil, or computations based upon ASTM D3238–90 and either ASTM D2502–87 or ASTM D2503–82 (Reapproved 1987) for oil; and computations based on ASTM D1945–91 or ASTM D1946–90 for gas. Use daily fuel feed rates from company records for all fuels and the carbon content of the most recent fuel sample under this section to determine tons of carbon per day from combustion of each fuel. (All ASTM methods are incorporated by reference under § 75.6.) Where more than one fuel is combusted during a calendar day, calculate total tons of carbon for the day from all fuels.

* * * * *

2.3 * * *

(Eq. G–4)

Where:

* * * * *

F_c = Carbon based F-factor, 1040 scf/mmBtu for natural gas; 1,240 scf/mmBtu for crude, residual, or distillate oil; and calculated according to the procedures in section 3.3.5 of appendix F to this part for other gaseous fuels.

* * * * *

76. Appendix G to part 75 is amended by adding new sections 5 through 5.3 to read as follows:

5. Missing Data Substitution Procedures for Fuel Analytical Data

Use the following procedures to substitute for missing fuel analytical data used to calculate CO_2 mass emissions under this appendix.

5.1 *Missing Carbon Content Data Prior to 4/1/2000*

Prior to April 1, 2000, follow either the procedures of this section or the procedures of section 5.2 of this appendix to substitute for missing carbon content data. On and after April 1, 2000, use the procedures of section 5.2 of this appendix to substitute for missing carbon content data, not the procedures of this section.

5.1.1 Most Recent Previous Data

Substitute the most recent, previous carbon content value available for that fuel type (gas, oil, or coal) of the same grade (for oil) or rank (for coal). To the extent practicable, use a carbon content value from the same fuel supply. Where no previous carbon content data are available for a particular fuel type or rank of coal, substitute the default carbon content from Table G–1 of this appendix.

5.1.2 [Reserved]

5.2 Missing Carbon Content Data On and After 4/1/2000

Prior to April 1, 2000, follow either the procedures of this section or the procedures of section 5.1 of this appendix to substitute for missing carbon content data. On and after April 1, 2000, use the procedures of this section to substitute for missing carbon content data.

5.2.1 In all cases (i.e., for weekly coal samples or composite oil samples from continuous sampling, for oil samples taken from the storage tank after transfer of a new delivery of fuel, for as-delivered samples of oil, diesel fuel, or gaseous fuel delivered in lots, and for gaseous fuel that is supplied by a pipeline and sampled monthly, daily or hourly for gross calorific value) when carbon content data is missing, report the appropriate default value from Table G–1.

5.2.2 The missing data values in Table G–1 shall be reported whenever the results of a required sample of fuel carbon content are either missing or invalid. The substitute data value shall be used until the next valid carbon content sample is obtained.

TABLE G–1.—MISSING DATA SUBSTITUTION PROCEDURES FOR MISSING CARBON CONTENT DATA

Parameter	Sampling technique/frequency	Missing data value
Oil and coal carbon content	All oil and coal samples, prior to April 1, 2000	Most recent, previous carbon content value available for that grade of oil, or default value, in this table.
Gas carbon content	All gaseous fuel samples, prior to April 1, 2000.	Most recent, previous carbon content value available for that type of gaseous fuel, or default value, in this table.
Default coal carbon content	All, on and after April 1, 2000	Anthracite: 90.0 percent. Bituminous: 85.0 percent. Subbituminous/Lignite: 75.0 percent.
Default oil carbon content	All, on and after April 1, 2000	90.0 percent.
Default gas carbon content	All, on and after April 1, 2000	Natural gas: 75.0 percent. Other gaseous fuels: 90.0 percent.

5.3 Gross Calorific Value Data

For a gas-fired unit using the procedures of section 2.3 of this appendix to determine CO_2 emissions, substitute for missing gross calorific value data used to calculate heat input by following the missing data procedures for gross calorific value in section 2.4 of appendix D to this part.

Appendix H to Part 75—Revised Traceability Protocol No. 1

77. Appendix H to part 75 is removed and reserved.

Appendix J to Part 75—Compliance Dates for Revised Recordkeeping Requirements and Missing Data Procedures

78. Appendix J to part 75 is removed and reserved.

[FR Doc. 99–8939 Filed 5–25–99; 8:45 am]

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Federal Register

Wednesday
May 26, 1999

Part III

Department of Education

Office of Special Education and Rehabilitative Services; Office of Special Education Programs; Inviting Applications for New Awards to Serve the Deaf-Blind Population in Maryland for Fiscal Year 1999; Notice

DEPARTMENT OF EDUCATION

[CFDA NO. 84.326C]

Office of Special Education and Rehabilitative Services; Office of Special Education Programs; Reopening Notice To Invite Applications for New Awards To Serve The Deaf-Blind Population in the State of Maryland for Fiscal Year (FY) 1999

AGENCY: Department of Education.

SUMMARY: On March 3, 1999, a notice was published in the **Federal Register** (64 FR 10352) inviting applications for new FY 1999 awards to support projects that help build the capacity of State and local agencies to facilitate the achievement of improved outcomes by children who are deaf-blind, and their families. The FY 1999 awards will support projects that provide specialized technical assistance regarding the provision of early intervention, special education, related, and transitional services to children and young adults who are deaf-blind. Based on the applications received, we expect to fund projects that, as a whole, will provide technical assistance services in each State in the country. However, we did not receive, prior to the application deadline, any applications from applicants proposing to address the needs of children with deaf-blindness in Maryland. Accordingly, the purpose of this notice is to invite applications for projects that will serve the State of Maryland.

Deadline for Transmittal of Applications: June 11, 1999.

Deadline for Intergovernmental Review: August 9, 1999.

Applications Available: May 26, 1999.

Note to Applicants: The notice published on March 3, 1999, provides other information that applies to this competition. Specifically, the priority in that notice, entitled Projects for Children and Young Adults Who Are Deaf-Blind (84.326C), identifies the requirements for applications submitted in response to this notice.

In addition, the *Eligible Applicants* section in the March 3, 1999 notice is amended for purposes of this competition by limiting eligible applicants to entities that meet the eligibility criteria in the priority and propose to address the needs of children with deaf-blindness in the State of Maryland. Potential applicants should consult the statement of the final priority published in the **Federal Register** on March 3, 1999 (64 FR 10352) to ascertain the substantive requirements for their applications.

FOR FURTHER INFORMATION CONTACT: For further information on this notice contact Debra Sturdivant, U.S. Department of Education, 600 Independence Avenue, SW, room 3317, Switzer Building, Washington, D.C. 20202–2641. FAX: (202) 205–8717 (FAX is the preferred method for requesting information). Telephone: (202) 205–8038. Internet: Debra__Sturdivant@ed.gov

Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number: (202) 205–8953. Individuals with disabilities may obtain a copy of this notice or the application packages referred to in this notice in an alternate format (e.g. Braille, large print, audiotape, or computer diskette) by contacting the Department as listed above. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

Electronic Access to This Document

You may review 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 (GPO) toll free at 1–800–293–6498; or in the Washington, D.C., area at (202) 512–1530.

Note: The official version of a document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo/nara/index.html

(Authority: 20 U.S.C. 1485(c))

Dated: May 20, 1999.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 99–13263 Filed 5–25–99; 8:45 am]

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Federal Register

Wednesday
May 26, 1999

Part IV

Department of Justice

Immigration and Naturalization Service

8 CFR Parts 212 and 237

Inadmissibility and Deportability on Public Charge Grounds; Field Guidance on Deportability and Inadmissibility on Public Charge Grounds; Proposed Rule and Notice

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 212 and 237

[INS No. 1989–99; AG Order No. 2225–99]

RIN 1115–AF45

Inadmissibility and Deportability on Public Charge Grounds

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend the Department of Justice's (Department's) regulations to establish clear standards governing a determination that an alien is inadmissible or ineligible to adjust status, or has become deportable, on public charge grounds. This proposed rule is necessary to alleviate growing public confusion over the meaning of the currently undefined term ''public charge'' in immigration law and its relationship to the receipt of Federal, State, or local public benefits. By defining ''public charge,'' the Department seeks to reduce the negative public health consequences generated by the existing confusion and to provide aliens with better guidance as to the types of public benefits that will and will not be considered in public charge determinations.

DATES: Written comments must be submitted on or before July 26, 1999.

ADDRESSES: Please submit written comments, in triplicate, to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW, Room 5307, Washington, DC 20536. To ensure proper handling, please reference INS No. 1989–99 on your correspondence. Comments are available for public inspection at the above address by calling (202) 514–3048 to arrange an appointment.

FOR FURTHER INFORMATION CONTACT: Sophia Cox or Kevin Cummings, Immigration and Naturalization Service, Office of Adjudications, 425 I Street, NW, Washington, DC 20536; telephone (202) 514–4754.

SUPPLEMENTARY INFORMATION:

Background and Necessity for Definition of ''Public Charge''

Recent immigration and welfare reform laws have generated considerable public confusion about whether the receipt of Federal, State, or local public benefits for which an alien may be eligible renders him or her a ''public charge'' under the immigration statutes governing admissibility, adjustment of status, and deportation. (See 8 U.S.C. 1182(a)(4); 8 U.S.C. 1227(a)(5).) (See also Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. 104–208, Div. C, Title V, 110 Stat. 3009–670 (codified as amended in different sections of 8 U.S.C.) (1996); Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), Pub. L. 104–193, Title IV, 110 Stat. 2260 (codified as amended generally at 8 U.S.C. 1601, *et seq.*) (1996).)

Under section 212(a)(4) of the Immigration and Nationality Act (the Act), the determination of whether an individual alien ''is likely at any time to become a public charge'' is made by a Department of State consular officer at the time the alien's visa application is adjudicated overseas, by an Immigration and Naturalization Service (Service) officer at the time an alien seeks admission into the United States, or by the Service at the time an alien applies for adjustment of status if he or she is already in the United States. 8 U.S.C. 1182(a)(4). The statute further states that the decision shall be ''in the opinion of'' the consular officer or the Attorney General, who has delegated this authority to the Service. Id.; 8 CFR part 2.1. Under section 237(a)(5) of the Act, an alien is also deportable if he or she ''has become a public charge'' within 5 years after his or her ''date of entry'' into the United States for causes not shown to have arisen since entry. 8 U.S.C. 1227(a)(5). An immigration judge will make the determination if any of these issues arise during removal proceedings for an alien.

On August 22, 1996, the President signed PRWORA, known as the welfare reform law. The welfare reform law and its amendments imposed new restrictions on the eligibility of aliens, whether present in the United States legally or illegally, for many Federal, State, and local public benefits. 8 U.S.C. 1601-1646 (as amended). Despite these new restrictions, many legal aliens remain eligible for at least some forms of public assistance, such as Medicaid, Food Stamps, Supplemental Security Income (SSI), Temporary Assistance for Needy Families (TANF), the Children's Health Insurance Program (CHIP), and the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), among other benefits. Congress also chose not to apply the alien eligibility restrictions in the welfare reform law to emergency medical assistance; short-term, in-kind, non-cash emergency disaster relief; public health assistance related to immunizations and to treatment of the symptoms of a communicable disease; certain in-kind services (e.g., soup kitchens, etc.) designated by the Attorney General as necessary for the protection of life and safety; and assistance under certain Department of Housing and Urban Development (HUD) programs. 8 U.S.C. 1611(b)(1).

Numerous states and localities also have funded public benefits, particularly medical and nutrition benefits, for aliens who are now ineligible for certain Federal public benefits. Congress further authorized states to enact laws after August 22, 1996, that affirmatively provide illegal aliens who would otherwise be ineligible for certain State and local benefits under the welfare reform law with such benefits. 8 U.S.C. 1621(d). A complete overview of all the public benefits and programs that remain available to various categories of aliens under the welfare reform law, as amended, is beyond the scope of this discussion.

Although Congress has determined that certain aliens remain eligible for some forms of medical, nutrition, and child care services, and other public assistance, numerous legal immigrants and other aliens are choosing not to apply for these benefits because they fear the negative immigration consequences of potentially being deemed a ''public charge.'' This tension between the immigration and welfare laws is exacerbated by the fact that ''public charge'' has never been defined in statute or regulation. Without a clear definition of the term, aliens have no way of knowing which benefits they may safely access without risking deportation or inadmissibility.

Additionally, the Service has been contacted by many State and local officials, Members of Congress, immigrant assistance organizations, and health care providers who are unable to give reliable guidance to their constituents and clients on this issue. According to Federal and State benefit-granting agencies, this growing confusion is creating significant, negative public health consequences across the country. This situation is becoming particularly acute with respect to the provision of emergency and other medical assistance, children's immunizations, and basic nutrition programs, as well as the treatment of communicable diseases. Immigrants' fears of obtaining these necessary medical and other benefits are not only causing them considerable harm, but are also jeopardizing the general public. For example, infectious diseases may spread as the numbers of immigrants who

decline immunization services increase. Concern over the public charge issue is further preventing aliens from applying for available supplemental benefits, such as child care and transportation vouchers, that are designed to aid individuals in gaining and maintaining employment. In short, the absence of a clear public charge definition is undermining the Government's policies of increasing access to health care and helping people to become self-sufficient. The Department seeks to remedy this problem with this proposed rule.

Overview of the Proposed Rule

First, the proposed rule provides a definition for the ambiguous statutory term ''public charge'' that will be used for purposes of both admissibility and adjustment of status under section 212(a)(4) of the Act and for deportation under section 237(a)(5) of the Act. Second, the proposed rule describes the kinds of public benefits that, if received, could result in a finding that a person is a ''public charge.'' The proposed rule also provides examples of the types of public benefits that will not be considered in public charge determinations. Third, the proposed rule adopts long-standing principles developed by the case law. As discussed below, the cases have established prerequisites and factors to be considered in making public charge determinations. The rule makes clear that the mere receipt of public assistance, by itself, will not lead to a public charge finding without satisfaction of these additional legal requirements.

The Meaning of ''Public Charge'' and Public Benefits That Demonstrate Primary Dependence on the Government for Subsistence

Following extensive consultation with benefit-granting agencies, the Department is proposing to define ''public charge'' to mean an alien who has become (for deportation purposes) or who is likely to become (for admission or adjustment purposes) ''primarily dependent on the Government for subsistence, as demonstrated by either the receipt of public cash assistance for income maintenance or institutionalization for long-term care at Government expense.'' Institutionalization for short periods of rehabilitation does not constitute such primary dependence. This interpretation of ''public charge'' is reasonable because it is based on the plain meaning of the word ''charge,'' the historical context of public dependency when the public charge immigration provisions were first enacted more than a century ago, and the expertise of the benefit-granting agencies that deal with subsistence issues. It is also consistent with factual situations presented in the public charge case law.

When a word is not defined by statute and legislative history does not provide clear guidance, courts often construe it in accordance with its ordinary or natural meaning as contained in the dictionary. (See, e.g., *Sutton* v. *United Air Lines, Inc.,* 130 F.3d 893, 898 (10th Cir. 1997), cert. granted, *119 S.* Ct. 790 (1999) (citations omitted).) The word ''charge'' has many meanings in the dictionary, but the one that can be applied unambiguously to a person and best clarifies the phrase ''become a public charge'' is ''a person or thing committed or entrusted to the care, custody, management, or support of another.'' *Webster's Third New International Dictionary of the English Language* 377 (1986). The dictionary gives the following apt sentence as an example of usage: ''[H]e entered the poorhouse, becoming a county charge.'' Id. (See also 3 *Oxford English Dictionary* 36 (2d ed. 1989) (definition #13 for ''charge''—''The duty or responsibility of taking care of (a person or thing); care, custody, superintendence'').)

This language indicates that a person becomes a public charge when he or she is committed to the care, custody, management, or support of the public. The dictionary definition suggests a complete, or nearly complete, dependence on the Government rather than the mere receipt of some lesser level of financial support. Historically, individuals who became dependent on the Government were institutionalized in asylums or placed in ''almshouses'' for the poor long before the array of limited-purpose public benefits now available existed. This primary dependence model of public assistance was the backdrop against which the ''public charge'' concept in immigration law developed in the late 1800s.

Although no case has specifically identified the types of public benefits that can give rise to a public charge finding, a definition based on primary dependence on the Government is consistent with the facts found in the deportation and admissibility cases. (See, e.g., *Matter of C–R–,* 7 I. & N. Dec. 124 (BIA 1956) (deportation based on public mental hospital institutionalization); *Matter of Harutunian,* 14 I. & N. Dec. 583 (R.C., Int. Dec. 1974) (receipt of old age assistance for principal financial support was an important factor in denying admission).)

The Service has also sought the advice and relied on the expertise of various Federal agencies that administer a wide variety of public benefits. The Service consulted primarily with the Department of Health and Human Services (HHS), the Social Security Administration (SSA), and the Department of Agriculture (USDA). The HHS, which administers TANF, Medicaid, CHIP, and many other benefits, has advised that the best evidence of whether an individual is relying primarily on the Government for subsistence is either the receipt of public cash benefits for income maintenance purposes or institutionalization for long-term care at Government expense. (See letter to INS Commissioner Doris Meissner from HHS Deputy Secretary Kevin Thurm, dated March 25, 1999) (hereinafter ''HHS Letter'' and appearing in an appendix to this document.) The USDA, which administers Food Stamps, WIC, and other nutrition assistance programs, and SSA, which administers SSI and other programs, and other benefit-granting agencies have concurred with the HHS advice to the Service that receipt of cash assistance for income maintenance is the best evidence of primary dependence on the Government. (See letter to INS Commissioner Doris Meissner from Shirley R. Watkins, USDA Under Secretary for Food, Nutrition and Consumer Services, dated April 15, 1999) (hereinafter ''USDA Letter'' and appearing in an appendix to this document); letter to Robert L. Bach, INS Executive Associate Commissioner for Policy and Planning from Susan M. Daniels, SSA Deputy Commissioner for Disability and Income Security Programs, dated May 14, 1999) (hereinafter ''SSA Letter'' and appearing in an appendix to this document.)

Cash assistance for income maintenance includes (1) SSI, (2) cash TANF (other than certain supplemental cash benefits not defined as ''assistance'' under TANF rules, as provided in §§ 212.103 and 237.13 of this proposed rule), and (3) State or local cash benefit programs for income maintenance (often called ''General Assistance'' programs, but which may exist under other names). Acceptance of these forms of public cash assistance is one factor that could be considered in determining whether a person is, or is likely to be, a public charge, provided the additional requirements for deportation or inadmissibility discussed later in this Supplementary Section and in the regulation are also met.

According to HHS and other benefit-granting agencies consulted by the Service, non-cash benefits generally provide supplementary support in the form of vouchers or direct services to

support nutrition, health, and living condition needs. (See HHS Letter.) These benefits are often provided to low-income working families to sustain and improve their ability to remain self-sufficient. A few examples of these non-cash benefits that do not directly provide subsistence are Medicaid, Food Stamps, CHIP, and their related State analogues, WIC, housing benefits, transportation vouchers, and certain kinds of special-purpose non-cash benefits provided under the TANF program. These forms of benefits, and others discussed below and in the proposed regulation, will not be considered for public charge purposes. The HHS further stated that ''* * * it is extremely unlikely that an individual or family could subsist on a combination of non-cash support benefits or services alone. * * * HHS is unable to conceive of a situation where an individual, other than someone who permanently resides in a long-term care institution, could support himself or his family solely on non-cash benefits so as to be primarily dependent on the [G]overnment.'' (See HHS Letter.)

The one exception identified by HHS to the principle that non-cash benefits do not demonstrate primary dependence is the instance where Medicaid or related programs pay for the costs of a person's institutionalization for long-term care (other than imprisonment for conviction of a crime). Such institutionalization costs, therefore, may be considered in public charge determinations. However, the proposed rule makes clear that a short period of institutionalization necessary for rehabilitation purposes does not demonstrate that an individual is, or is likely to become, primarily dependent on the Government for public charge purposes.

This distinction between cash benefits that can lead to primary dependence on the Government and non-cash benefits that do not create such dependence is already applied by the State Department with regard to Food Stamps, a non-cash benefit program. The Foreign Affairs Manual (FAM) for consular officers excludes Food Stamps from public charge admissibility consideration because it is an essentially supplementary benefit that does not make recipients dependent on the Government for subsistence. (See 9 FAM section 40.41, N.9.1.) The proposed definition of ''public charge'' is consistent with this existing State Department policy and that agency's recognition that certain supplemental forms of public assistance should not be considered in a public charge determination.

Receipt of Non-cash Public Benefits That do not Demonstrate Primary Dependence on the Government for Subsistence

It has never been Service policy that the receipt of any public service or benefit must be considered for public charge purposes. The nature of the program is important. For instance, attending public schools, taking advantage of school lunch or other supplemental nutrition programs, such as WIC, obtaining immunizations, and receiving public emergency medical care typically do not make a person inadmissible or deportable. Non-cash benefits, such as these and others, are by their nature supplemental and frequently support the general welfare. By focusing on cash assistance for income maintenance, the Service can identify those individuals who are primarily dependent on the Government for subsistence without inhibiting access to non-cash benefits that serve important public interests. Certain Federal, State, and local benefits are increasingly being made available to families with incomes far above the poverty level, reflecting broad public policy decisions about improving general health and nutrition, promoting education, and assisting working-poor families in the process of becoming self-sufficient. For example, many states provide CHIP to children in families with resources up to 200 percent of the poverty line and sometimes higher. (See HHS Letter at p. 3.) Thus, participation in such programs is not evidence of poverty or dependence.

The proposed rule identifies the major forms of cash benefits that may be considered for public charge purposes and several examples of non-cash benefits that will not be considered. Due to the ever-changing character of the Federal, State, and local public benefits still available to aliens, it is not possible to name every benefit that will or will not be considered for public charge purposes. Aliens and their advisors should carefully consider the nature of the specific public benefits involved. If they could be construed as cash assistance for income maintenance, as distinguished from in-kind services, medical or nutrition benefits, vouchers or other forms of non-cash benefits, then a Service officer may consider their receipt in making a public charge decision, even if the benefit is not specifically addressed by name in the proposed rule. Again, receipt of SSI, cash TANF (except supplemental cash-TANF excluded in the rule), and State or local cash assistance programs for income maintenance (e.g., ''General Assistance'') will be considered as part of the public charge analysis. Although these benefits are the only examples of ''cash assistance for income maintenance'' that the Service and other Federal benefit-granting agencies have been able to identify, public comment is requested on whether there are any other specific forms of public cash assistance for income maintenance that should be mentioned. The Service will also consider public benefits (including Medicaid) for supporting aliens who reside in an institution for long-term care (e.g., a nursing home or mental health institution).

A person's mere receipt of any of these forms of cash assistance for income maintenance, or being institutionalized for long-term care, does not necessarily make him or her inadmissible, ineligible to adjust status, or deportable on public charge grounds. As discussed in detail in the next part of this Supplementary Information section, the law requires that a variety of other factors and prerequisites must be considered as well. These additional requirements have been carefully described in both the admissibility and deportation sections of this proposed rule at §§ 212.104, 212.106, 212.108, 212.109, 237.11, 237.15, 237.16, and 237.18. Every public charge decision will continue to be made on a case-by-case basis. In other words, the proposed rule does not create any blanket requirements that individuals who receive public cash assistance or who are institutionalized for long-term care must be removed from the United States or denied admission or adjustment.

Some cash benefits received by aliens from the Government are not intended for income maintenance, and thus will not be considered for public charge purposes under this rule. Examples of such special-purpose cash benefits that do not lead to primary dependence on the Government include the Low Income Home Energy Assistance Program (LIHEAP), 42 U.S.C. 8621, *et seq.*; the Child Care and Development Block Grant Program (CCDBGP), 42 U.S.C. 9858 *et seq.*; Food Stamp benefits issued in cash (see e.g., 7 U.S.C. 2026(b)); certain educational assistance programs, and non-recurrent, short-term crisis benefits funded in cash by TANF but excluded from the TANF program's definition of ''assistance.'' (See 64 FR 17720, 17880 (April 12, 1999) (codified at 45 CFR 260.31).) In addition, and consistent with existing Service practice, the proposed rule states that cash payments that have been earned, such as benefits under Title II of the Social Security Act, 42 U.S.C. 401 *et seq.*, Government pensions, veterans'

benefits, among other forms of earned benefits, do not support a public charge finding.

Other non-cash public benefits that will not be considered and that are listed in the proposed rule include, but are not limited to: Medicaid; CHIP; emergency medical assistance; other health insurance and health services for the testing and treatment of symptoms of communicable diseases; emergency disaster relief; nutrition programs, such as Food Stamps and WIC; housing benefits; energy benefits; job training programs; child care; and non-cash benefits funded under the TANF program. State and local non-cash benefits of a similar nature also will not be considered. It is the underlying nature of the program, not the name adopted in a particular State, that will determine whether it is relevant for public charge consideration.

Additional Requirements for Public Charge Determinations

After defining ''public charge,'' the separate admissibility and deportation sections of the proposed rule incorporate principles established by case law and statute for each of those public charge determinations.

Admission and Adjustment of Status

The provisions that relate to admission and adjustment of status incorporate the ''totality of the circumstances'' analysis that officers must employ in making a prospective public charge decision. (See, e.g, *Matter of Perez*, 15 I. & N. Dec. 136, 137 (BIA 1974).) Under section 212(a)(4)(B) of the Act, officers are required to consider specific minimum factors in determining whether the alien's circumstances indicate that he or she is likely to become a public charge. These factors include the alien's age, health, family status, assets, resources, financial status, education, and skills. No single factor, other than the lack of an Affidavit of Support as described below, will determine whether an alien is likely to become a public charge, including past or current receipt of public cash benefits.

In addition, most aliens intending to immigrate or adjust status in family-based and certain employment-based categories after December 19, 1997, are required to file the new Form I–864, ''Affidavit of Support Under Section 213A of the Act,'' signed by their sponsor(s). 8 U.S.C. 1182(a)(4)(C–D); 8 U.S.C. 1183a; 8 CFR part 213a.2. The new Affidavit of Support is legally binding and requires sponsors to maintain the sponsored alien at an annual income of not less than 125 percent of the Federal poverty line for the relevant family size. 8 U.S.C. 1183a(a); 8 CFR part 213a.2. If an Affidavit of Support is not filed, the intending immigrant will be denied admission or adjustment on public charge grounds, unless he or she is exempt from the Affidavit of Support requirement under section 212(a)(4)(C–D) of the Act. As one of the circumstances considered in determining whether a person is likely to become a public charge, officers may also consider any Affidavit of Support filed by a sponsor on behalf of an alien under section 213A of the Act and are encouraged to do so. (See 8 U.S.C. 1182(a)(4)(B)(ii).) Certain categories of aliens seeking to become lawful permanent residents are exempt from the Affidavit of Support requirement—including those who qualify as widows or widowers of citizens or as battered spouses, and their children. Id.

In one significant respect, a public charge determination for purposes of inadmissibility differs from the context of deportability. As the next section describes in detail, deportation on public charge grounds requires the Service to prove that the alien or another obligated party has failed to repay a legal demand for the public benefits at issue. The proposed rule adopts the case-developed doctrine that this failure-to-reimburse prerequisite for deportation does not apply to public charge decisions for admissibility or adjustment of status. (See *Matter of Harutunian*, 14 I. & N. Dec. at 589–590.) Applicants for admission or adjustment of status, therefore, could be found inadmissible or ineligible to adjust status on public charge grounds even if there is no duty to reimburse the agency that provides the cash assistance. Again, this receipt of public cash benefits will result in such a finding only if the totality of the alien's circumstances, including the minimum factors in section 212(a)(4)(B) of the Act, indicate that he or she is likely to become a public charge.

The provisions on admissibility and adjustment in the proposed rule conclude with a section that lists categories of aliens to whom the public charge ground contained in section 212(a)(4) of the Act does not apply. These categories include refugees, asylees, Amerasians, and certain Nicaraguans, Central Americans, Haitians, and Cuban/Haitian entrants. Although these statutory exemptions are codified throughout the Act and other laws, the rule collects them in one place for the public's ease of reference.

Deportation

The provisions on deportation in the proposed rule incorporate the Attorney General's decision in the leading case, *Matter of B–*, 3 I. & N. Dec. 323 (AG and BIA 1948), that the Service can prove public charge deportability only if there has been a failure to comply with a legally enforceable duty to reimburse the assistance agency for the costs of care. In addition, the benefit agency's demand for repayment of the specific public benefit must have been made within the alien's initial 5-year period after entry, unless it is shown that demand would have been futile because there was no one against whom payment could be enforced. *Matter of L–*, 6 I. & N. Dec. 349 (BIA 1954). Under the proposed definition for public charge previously discussed, only the failure to meet an agency's demand for repayment of a cash benefit for income maintenance or for the costs of institutionalization for long-term care will be considered for deportation. If the alien can show that the causes for which he or she received one of these types of public cash benefits during his or her initial 5 years after entry arose after entry, he or she will not be deportable on public charge grounds. (See 8 U.S.C. 1227(a)(5).) The requirements and procedures concerning the demand for the repayment of a public benefit are governed by the specific program rules established by law and administered by the benefit granting agencies, or by State or local governments, not by the Service. This rule does not alter those existing procedures. The Service does not make determinations about which public benefits must be repaid. The Federal, State, and local benefit-granting agencies are responsible for those decisions. The Service may only initiate removal proceedings based on the public charge ground after the benefit agency has chosen to seek repayment, obtained a final judgment, taken all steps to collect on that judgment, and been unsuccessful.

The proposed rule also provides that the Affidavit of Support is relevant to the public charge inquiry for deportation purposes. Under the new Affidavit of Support rules, if a sponsored alien obtains Federal, State, or local means-tested public benefits, the sponsor is obligated to repay those benefits if the benefit-granting agency makes a demand for repayment. (See 8 U.S.C. 1183a(b); 8 CFR parts 213a.2, 213a.4.) Various Federal agencies have designated certain assistance programs that they administer to be ''means-tested public benefits.'' For example, SSI, TANF, Medicaid, Food Stamps, and

CHIP have been designated as Federal means-tested public benefits and could give rise to a repayment obligation under the Affidavit of Support. If states designate means-tested public benefits in the future, such benefits also could give rise to such an obligation. However, only demands for the repayment of cash benefits for income maintenance purposes, such as SSI, cash TANF and State General Assistance programs, or the costs of institutionalization for long-term care, will be relevant for deportation determinations under the proposed definition of ''public charge.''

The Department has determined that the existing three-part *Matter of B–* test for public charge deportations also applies to demands for repayment of means-tested benefits under the new Affidavit of Support. The Government entity providing the benefit must have a legal right to seek repayment under the Affidavit of Support; the agency must have made a demand for repayment; and the obligated party or parties must have failed to meet this demand. The rule also requires that, before a deportation action may be initiated, the agency seeking repayment must have taken all steps necessary to obtain and enforce a final judgment requiring the sponsor or other person responsible for the debt to pay. Without such a requirement, an alien could be wrongly deported as a public charge based on a debt that a court might later determine was not legally enforceable. Although the demand for repayment must be made within 5 years of the alien's admission, there is no time limit on obtaining a final judgment as long as it is obtained prior to the public charge proceedings.

Welfare Reform and Other Significant Factors That Limit Potential for Aliens to Become ''Public Charges''

The proposed rule is not expected to alter substantially the number of aliens who will be found deportable or inadmissible as public charges. Deportations on public charge grounds have always been rare due to the strict *Matter of B-* requirements that agencies first must demand repayment, assuming they have a legal right to do so, and the obligated party or parties must have failed to pay. This is unlikely to change.

Several recently enacted welfare and immigration reform measures have also contributed to reducing the possibility that aliens will be found likely to become public charges under section 212(a)(4) of the Act. Due to the increased restrictions of the welfare reform law, as amended, many aliens are no longer eligible to receive some public benefits formerly available to them. For example, one significant new restriction prohibits legal, ''qualified aliens'' from receiving Federal means-tested public benefits, with some exceptions, for 5 years if they arrive after August 22, 1996. 8 U.S.C. 1613. Combined with the 5-year limitation in section 237(a)(5) of the Act, the welfare reform restriction means fewer aliens are likely to become deportable public charges. Under new ''deeming'' rules, some aliens who might otherwise have been able to obtain certain Federal, State, or local means-tested public benefits can no longer do so because their sponsors' resources may now count as resources available to the aliens (*i.e.,* the sponsors' resources are ''deemed'' available to the alien), which would normally raise the alien's income over the benefit eligibility threshold. 8 U.S.C. 1631, 1632. In addition, the requirement of a legally binding Affidavit of Support obligating sponsors to support their immigrating family members above the poverty level before they will be granted admission or adjustment has significantly raised the bar for people who might, in the past, have entered and become public charges. These new laws work together to limit the potential for immigrants to become dependent on the Government. The proposed rule defining ''public charge'' will not change or negatively affect the operation of these provisions.

Conclusion

The Department believes that this rule will provide for better overall administration of the public charge provisions of the Act. It will also help alleviate the increasing, negative public health and nutrition consequences caused by the confusion over the meaning of ''public charge.'' The rule will provide rules of decision that will apply in proceedings before the Executive Office for Immigration Review (EOIR), as well as proceedings before the Service. The Department anticipates, based on the Service's consultations, that the State Department will adopt the same view and will issue guidance to consular officers accordingly.

At a later date, the Department plans to propose additional revised sections for part 212 concerning the other grounds of inadmissibility under section 212 of the Act. Sections 212.100 through 212.112 of this proposed rule are being issued in advance as Subpart G. The Department will amend the labeling of this subpart or section numbers, if necessary, at the time of final publication of any revised sections to this part.

Regulatory Flexibility Act

The Attorney General has determined, in accordance with 5 U.S.C. 605(b), that this rule would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination is that this rule will apply to individual aliens, who are not within the definition of small entities established by 5 U.S.C. 601(6).

Unfunded Mandates Reform Act

This rule will not result 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, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the Unfunded Mandates Reform Act of 1995. 2 U.S.C. 658(7)(A)(ii).

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined in 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule is considered by the Department of Justice to be a ''significant regulatory action'' under section 3(f)(4) of E. O. 12866, Regulatory Planning and Review. Accordingly, this proposed rule has been submitted to the Office of Management and Budget for review.

Executive Order 12612

This rule 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 E. O. 12612, it is determined that this rule would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988: Civil Justice Reform

This proposed rule meets the applicable standards set forth in subsections 3(a) and 3(b)(2) of E. O. 12988.

Plain Language in Government Writing

The President's June 1, 1998, Memorandum published at 63 FR 31885, concerning Plain Language in Government Writing, applies to this proposed rule.

Paperwork Reduction Act of 1995

This proposed rule does not specifically impose an information collection burden on the public separate from existing provisions of the Act or other regulations. However, the Service anticipates revising the Form I–485, ''Application to Register Permanent Status or Adjust Status,'' as necessary, to make it consistent with the final public charge rule. The Department requests public comment on proposed revisions to the I–485, or any other immigration forms, that may be necessary as a result of this public charge rule.

List of Subjects

8 CFR Part 212

Administrative practice and procedure, Aliens, Admission, Adjustment of status, Public charge determinations.

8 CFR Part 237

Administrative practice and procedure, Aliens, Deportation, Public charge determinations.

Accordingly, chapter I of title 8 of the Code of Federal Regulations, is proposed to be amended as follows:

PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

1. The authority citation for part 212 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1183, 1183a, 1184, 1187, 1225, 1226, 1227, 1228, 1252, 8 CFR part 2, 8 CFR part 213A.

2. Sections 212.1 through 212.15 are designated as Subpart A.

3. The heading for Subpart A is added to read as follows:

Subpart A—General

4. Part 212 is amended by adding and reserving Subparts B through F.

5. Subpart G is added to read as follows:

Subpart G—Public Charge Inadmissibility

Sec.

Subpart G—Public Charge Inadmissibility

§ 212.100 What issues do §§ 212.100 through 212.112 address?

(a) Sections 212.100 through 212.112 of this part address the public charge grounds of inadmissibility under section 212(a)(4) of the Act. It applies to all aliens seeking admission to the United States or adjustment of status to lawful permanent residency, except for the categories of aliens described in § 212.110 or other categories of aliens who may be exempted by law.

(b) In §§ 212.101 through 212.112 of this part, the terms ''I,'' ''me'' and ''my'' in the section headings and ''you'' and ''your'' in the text of each section refer to an alien who may be inadmissible or ineligible to adjust status on public charge grounds.

§ 212.101 What law governs a determination of whether I am inadmissible on public charge grounds?

The public charge grounds of inadmissibility are found under section 212(a)(4) of the Act. A Department of State (State Department) consular officer makes the public charge determination if you are applying for a visa overseas. A Service officer makes the public charge determination if you are applying for admission at a port-of-entry to the United States or for adjustment of status to that of a lawful permanent resident. Under section 212(a)(4) of the Act, you will be found inadmissible or ineligible to adjust status if, ''in the opinion of'' the consular officer or Service officer making the decision, you are considered ''likely at any time to become a public charge.'' If you have been placed in removal proceedings where issues of your admissibility or eligibility to adjust status arise, an immigration judge will decide whether you are likely to become a public charge.

§ 212.102 What is the meaning of ''public charge'' for admissibility and adjustment of status purposes?

(a) (1) ''Public charge'' for purposes of admissibility and adjustment of status means an alien who is likely to become primarily dependent on the Government for subsistence as demonstrated by either:

(i) The receipt of public cash assistance for income maintenance purposes, or

(ii) Institutionalization for long-term care at Government expense (other than imprisonment for conviction of a crime).

(2) Institutionalization for short periods for rehabilitation purposes does not demonstrate primary dependence on the Government.

(b) For purposes of §§ 212.100 through 212.112 of this part:

(1) The term ''government'' refers to any Federal, State or local government entity or entities.

(2) The term ''cash'' includes not only funds you receive in the form of cash from a government agency, but also funds received from a government agency by check, money order, wire transfer, electronic funds transfer, direct deposit, or any other form that can be legally converted to currency, *provided that* the funds are for purposes of maintaining your income.

(c) As described in §§ 212.103(c) and 212.105 of this part, some forms of public assistance will not be considered for public charge purposes because they do not result in primary dependence on the Government. Immigration officers and immigration judges must also consider many other factors, as described in §§ 212.101–212.112 of this part, before making a final public charge determination.

§ 212.103 What specific benefits are considered to be ''public cash assistance for income maintenance''?

(a) Public benefits considered to be ''public cash assistance for income maintenance'' include:

(1) Supplemental Security Income (SSI), 42 U.S.C. 1381, *et seq.*;

(2) Temporary Assistance for Needy Families (TANF), 42 U.S.C. 601, *et seq.*, but not including supplemental cash benefits excluded from the term ''assistance'' under TANF program rules (see 45 CFR 260.31) or any non-cash benefits and services provided by the TANF program; and

(3) State and local cash assistance programs for income maintenance (often called State ''General Assistance,'' but which may exist under other names).

(b) Due to the constantly changing nature of the numerous Federal, State and local benefits for which you may be eligible, it is not possible to give a complete listing of such benefits that could be considered for public charge purposes. If you are receiving, or contemplate receiving, any public cash assistance (as ''cash'' is described in § 212.102(b)(2)) for purposes of maintaining your income, an immigration officer or immigration judge may consider it as a factor in making a decision as to whether you are likely to become primarily dependent on the Government.

(c) Some forms of cash benefits are not intended for income maintenance and, therefore, will not be considered for public charge purposes under §§ 212.101 through 212.112. Examples of such cash benefits that are supplemental in nature include the Low Income Home Energy Assistance Program (LIHEAP), 42 U.S.C. 8621 *et seq.*; the Child Care and Development Block Grant Program (CCDBGP), 42 U.S.C. 9858 *et seq.*; Food Stamp benefits issued in cash (see, e.g., 7 U.S.C. 2026(b)); certain educational assistance benefits; and non-recurrent, short-term crisis benefits, and other services funded in cash by the TANF program that do not fall within the TANF program's definition of ''assistance,'' as described in paragraph (a)(2) of this section.

(d) Cash benefits that have been earned continue to be irrelevant to the public charge ground of inadmissibility. A few examples of such earned benefits that will not be considered include benefits under Title II of the Social Security Act, 42 U.S.C. 401 *et seq.*, government pension benefits, and veterans' benefits.

§ 212.104 What factors will make me inadmissible or ineligible to adjust status on public charge grounds?

(a) Under section 212(a)(4)(B) of the Act, the immigration officer or consular official must consider, ''at a minimum,'' your age, health, family status, assets, resources, financial status, education, and skills in making a decision on whether you are likely to become a public charge. The decision-maker may also consider any Affidavit of Support filed by your sponsor(s) on your behalf under section 213A of the Act and 8 CFR part 213a. The decision-maker will consider the ''totality of circumstances'' before determining whether you are likely to become a public charge. No single factor, other than the lack of a sufficient Affidavit of Support as required by section 212(a)(4)(C) and (D) of the Act, will control this decision, including past or current receipt of public cash benefits, as described in paragraph (b) of this section.

(b) You are inadmissible or ineligible to adjust status on public charge grounds if, after consideration of your case in light of all of the minimum factors in section 212(a)(4)(B) of the Act, any Affidavit of Support (Form I–864) filed on your behalf under 8 CFR part 213a, and any other facts that may be relevant, the immigration officer, consular officer, or immigration judge determines that it is likely that you will become primarily dependent for your subsistence on the Government, at any time, as demonstrated by:

(1) Receipt of public cash assistance for income maintenance, including SSI, cash TANF (other than cash TANF benefits excluded in § 212.103(a)(2)), or State or local cash benefit programs for income maintenance, such as ''General Assistance''; or

(2) Institutionalization for long-term care (other than imprisonment for conviction of a crime) at Government expense. Institutionalization for short-term rehabilitation purposes does not demonstrate primary dependence on the Government.

§ 212.105 Are there any forms of public assistance that I can receive without becoming inadmissible as a public charge if I should later apply for a visa, admission, or adjustment of status?

(a) The only benefits that are relevant to the public charge decision are public cash assistance for income maintenance and institutionalization for long-term care at Government expense. Institutionalization for short periods for rehabilitation purposes will not be considered. Non-cash public benefits are not considered because they are of a supplemental nature and do not demonstrate primary dependence on the Government.

(b) Although it is not possible to list all of the non-cash public benefits that will not be considered, you will not risk being found inadmissible as an alien likely to become a public charge by receiving non-cash benefits under the following programs or benefit categories:

(1) The Food Stamp program, 7 U.S.C. 2011, *et seq.*,

(2) The Medicaid program, 42 U.S.C. 1396, *et seq.* (other than payments under the Medicaid program for long-term institutional care);

(3) The Children's Health Insurance Program (CHIP), 42 U.S.C. 1397aa, *et seq.*;

(4) Health insurance and health services (other than public benefits for costs of institutionalization for long-term care), including, but not limited to, emergency medical services, public benefits for immunizations and for testing and treatment of symptoms of communicable diseases, and use of health clinics;

(5) Nutrition programs, including, but not limited to, the Special Supplemental Nutrition Program for Women, Infants and Children (WIC), 42 U.S.C. 1786; and programs that operate under the National School Lunch Act, 42 U.S.C. 1751 *et seq.*; the Child Nutrition Act, 42 U.S.C. 1771 *et seq.*; and the Emergency Food Assistance Act, 7 U.S.C. 7501 *et seq.*;

(6) Emergency disaster relief;

(7) Housing benefits;

(8) Child care services;

(9) Energy benefits, such as LIHEAP, 42 U.S.C. 8621 *et seq.*;

(10) Foster care and adoption benefits;

(11) Transportation vouchers or other non-cash transportation services;

(12) Educational benefits, including benefits under the Head Start Act and aid for elementary, secondary, or higher education;

(13) Non-cash benefits or services funded by the TANF program;

(14) Job training programs;

(15) State and local supplemental, non-cash benefits that serve purposes similar to those of the Federal programs listed in this paragraph;

(16) Any other Federal, State, or local public benefit program, under which benefits are provided in-kind, through vouchers, or any other medium of exchange other than payment of cash assistance for income maintenance to the eligible person.

(c) Although the non-cash public benefits described in paragraph (b) of this section will not be considered for admissibility purposes, you may still be inadmissible or ineligible to adjust

status if, in the opinion of the officer making the decision, you are likely to become a public charge following his or her analysis of the totality of the circumstances, as described in § 212.104. This includes consideration of all the minimum statutory factors described in section 212(a)(4)(B) of the Act.

§ 212.106 If I have received public cash assistance for income maintenance, have been institutionalized for long-term care at Government expense, or have been deemed a public charge in the past, will I be inadmissible or ineligible to adjust status on public charge grounds now or in the future?

(a) Such past circumstances do not necessarily mean that you will be found inadmissible or ineligible to adjust status on public charge grounds based on a present application for admission or adjustment. The immigration officer, consular officer, or immigration judge who makes the decision must consider all of the relevant facts of your case. Past receipt of public cash assistance or institutionalization under circumstances that made you a public charge would support a finding that you are inadmissible only if, in light of all the factors listed in § 212.104, it is likely that you will continue to be, or become again, a public charge in the future.

(b) The length of time during which you previously received benefits or were institutionalized at Government expense, as well as the distance in time from your current application for admission or adjustment, are significant to the decision. Public cash benefits received in the recent past are more predictive of your likelihood to become a public charge in the future than benefits received in the more distant past. Similarly, public cash benefits received for longer time periods are more predictive than benefits received in the past for shorter periods. In addition, small amounts of public cash assistance for income maintenance received in the past are weighed less heavily than greater amounts under the ''totality of the circumstances'' analysis. The negative implication of your past receipt of public cash benefits for income maintenance or institutionalization for long-term care, however, may be overcome by positive factors in your case demonstrating that you are unlikely to become primarily dependent on the Government for subsistence.

§ 212.107 Will I be required to pay back any public benefits that I have received before an immigration officer or immigration judge will find me admissible or eligible to adjust status?

Immigration officers and immigration judges do not have the authority to require that you reimburse public benefit-granting agencies for assistance that you have received. However, they may consider your receipt of public cash assistance for income maintenance purposes or your institutionalization for long-term care at Government expense as factors in deciding whether you are likely to become a public charge in the future, regardless of whether the agency granting the benefit has sought reimbursement from you or any other party obligated to pay back the benefit on your behalf. If there is a final judgment against you for failure to repay the costs of public cash benefits or institutionalization that has not been satisfied, immigration officers or judges may also consider this failure to repay as one of the relevant factors in deciding whether you are likely to become a public charge.

§ 212.108 Are there any special requirements for aliens who are seeking to immigrate based on a family relationship or on employment?

Under section 212(a)(4)(C) and (D) of the Act, you must file an ''Affidavit of Support Under Section 213A of the Act'' (Form I–864) from your sponsor(s) in accordance with section 213A of the Act and 8 CFR part 213a if you are seeking to immigrate in certain family-based visa categories or as an employment-based immigrant who will work for a relative or a relative's firm. If you do not file the Affidavit of Support as required, you will be inadmissible or ineligible to adjust status on public charge grounds. Certain widows and widowers, battered spouses and children of U.S. citizens and lawful permanent residents are currently exempt under section 212(a)(4)(C) of the Act from filing an Affidavit of Support.

§ 212.109 Will I be considered likely to become a public charge because my spouse, parent, child, or other relative has become, or is likely to become, a public charge or has received public cash assistance?

(a) The fact that one, or all, of your close relatives has become, or is likely to become, a public charge will not make you inadmissible as a public charge, unless the evidence shows that you, individually, are likely to become a public charge.

(b) Public cash benefits for income maintenance received by your relatives will not be attributed to you for admission or adjustment purposes, unless they also represent your sole support. If such benefits are attributed to you because they are your sole support, they must be considered along with all of the other factors related to your case, as described in § 212.104, before you may be found inadmissible as a public charge.

§ 212.110 Are there any individuals to whom the public charge ground of inadmissibility does not apply?

(a) The Act and various other statutes contain exceptions to the public charge ground of inadmissibility for the following categories of aliens:

(1) Refugees and asylees at the time of admission and adjustment of status to legal permanent residency according to sections 207(c)(3) and 209(c) of the Act;

(2) Amerasian immigrants at admission as described in the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1988, section 584, contained in section 101(e), Public Law 100–202, 101 Stat. 1329–183 (1987) (as amended), 8 U.S.C. 1101 note;

(3) Cuban and Haitian entrants at adjustment as described in the Immigration Reform and Control Act of 1986 (IRCA), Public Law 99–603, Title II, section 202, 100 Stat. 3359 (1986) (as amended), 8 U.S.C. 1255a note;

(4) Nicaraguans and other Central Americans who are adjusting status as described in the Nicaraguan Adjustment and Central American Relief Act (NACARA), Public Law 105–100, section 202(a), 111 Stat. 2193 (1997)(as amended), 8 U.S.C. 1255 note;

(5) Haitians who are adjusting status as described in the Haitian Refugee Immigration Fairness Act of 1998, section 902, Title IX, Public Law 105–277, 112 Stat. 2681 (Oct. 21, 1998), 8 U.S.C. 1255 note;

(6) Aliens who entered the United States prior to January 1, 1972 and who meet the other conditions for being granted lawful permanent residence under section 249 of the Act and 8 CFR part 249.

(b) Other categories of aliens may also be excepted from the public charge provisions in section 212(a)(4) of the Act by subsequent legislation. The list of such aliens in paragraph (a) of this section may not include every excepted category.

(c) In addition, aliens who have been previously admitted for lawful permanent residence (''LPRs'') and who re-enter the United States are not applicants for admission and, therefore, are not subject to the grounds of inadmissibility, unless they are covered by one of the six categories described in

section 101(a)(13)(C) of the Act, including being absent from the United States for over 180 days.

§ 212.111 Are there any waivers for the public charge ground of inadmissibility?

There are no waivers available for the public charge grounds of inadmissibility, except for the waiver for certain aged, blind, or disabled applicants for adjustment of status under section 245A of the Act. (See 8 U.S.C. 1255a(d)(2)(B)(ii)(IV).) However, various laws have exempted certain categories of aliens from the requirements of section 212(a)(4) of the Act. Several of these categories are described in § 212.110(a).

§ 212.112 Is it possible to provide a bond or cash deposit to ensure that I will not become a public charge?

The Service may accept a suitable, legally binding public charge bond or cash deposit on your behalf that meets the conditions set forth in 8 U.S.C. 1183 and in 8 CFR part 213. Acceptance of such a bond or cash deposit is discretionary.

6. Part 237 is added to read as follows:

PART 237—DEPORTABLE ALIENS

Subpart A—Public Charge Deportability

Sec.

Subpart B—[Reserved]

Authority: 8 U.S.C. 1227(a)(5), 8 U.S.C. 1183a, 8 CFR part 213A.

Subpart A—Public Charge Deportability

§ 237.10 What issues do §§ 237.10 through 237.18 address?

(a) Sections 237.10 through 237.18 of this part address the public charge ground of deportation under section 237(a)(5) of the Act.

(b) In §§ 237.10 through 237.18 of this part, the terms ''I,'' ''me'' and ''my'' in the section headings and ''you'' and ''your'' in the text of each section refer to an alien who may be deportable as a public charge.

§ 237.11 What law governs whether I am deportable on public charge grounds?

(a) Section 237(a)(5) of the Act describes which aliens are deportable on public charge grounds. If the Service brings a removal proceeding against you charging that you are subject to deportation on public charge grounds, the Service must prove that you became a public charge within 5 years of your entry to the United States.

(b) If you can prove that the causes that led to your becoming a public charge arose after your entry to the United States, you will not be deported.

§ 237.12 What does it mean to be a ''public charge'' for purposes of removal as a deportable alien?

(a)(1) ''Public charge'' for purposes of removal as a deportable alien means an alien who has become primarily dependent on the Government for subsistence as demonstrated by either:

(i) The receipt of public cash assistance for income maintenance purposes, or

(ii) Institutionalization for long-term care at Government expense (other than imprisonment for conviction of a crime).

(2) Institutionalization for short periods for rehabilitation purposes does not demonstrate primary dependence on the Government.

(b) For purposes of §§ 237.10 through 237.18 of this part:

(1) The term ''government'' refers to any Federal, State or local government entity or entities.

(2) The term ''cash'' includes not only funds you receive in the form of cash from a government agency, but also funds received from a government agency by check, money order, wire transfer, electronic funds transfer, direct deposit, or any other form that can be legally converted to currency, *provided that* the funds are for purposes of maintaining your income.

(c) As described in §§ 237.13(c) and 237.14 of this part, some forms of public assistance will not be considered for public charge purposes because they do not result in primary dependence on the Government. In addition, you will not be found deportable on public charge grounds unless the other conditions in §§ 237.11, 237.15, and 237.16 of this part (if § 237.16 applies to your case) have been met.

§ 237.13 What specific benefits are considered to be ''public cash assistance for income maintenance''?

(a) Public benefits considered to be ''public cash assistance for income maintenance'' include:

(1) Supplemental Security Income (SSI), 42 U.S.C. 1381, *et seq.*;

(2) Temporary Assistance for Needy Families (TANF), 42 U.S.C. 601, *et seq.*, but not including supplemental cash benefits excluded from the term ''assistance'' under TANF program rules (see 45 CFR 260.31) or any non-cash benefits and services provided by the TANF program; and

(3) State and local cash assistance programs for income maintenance (often called State ''General Assistance,'' but which may exist under other names).

(b) Due to the constantly changing nature of the numerous Federal, State and local benefits for which you may be eligible, it is not possible to give a complete listing of such benefits that could be considered for public charge purposes. If, within 5 years of your entry into the United States, you have received any public benefit that is provided in the form of cash (as that term is described in § 237.12(b)(2) of this part) for purposes of maintaining your income, it may serve as a basis for your deportation on public charge grounds, *provided that* all of the requirements of section 237(a)(5) of the Act and the other conditions for deportation described in §§ 237.11, 237.15, and 237.16 of this part (if § 237.16 applies to your case) have been satisfied.

(c) Some forms of cash benefits are not intended for income maintenance, and therefore, will not be considered for public charge purposes under §§ 237.10 through 237.18 of this part. Examples of such cash benefits that are supplemental in nature include the Low Income Home Energy Assistance Program (LIHEAP), 42 U.S.C. 8621 *et seq.*; the Child Care and Development Block Grant Program (CCDBGP), 42 U.S.C. 9858 *et seq.*; Food Stamp benefits issued in cash (see, e.g., 7 U.S.C. 2026(b)); certain educational assistance benefits; and non-recurrent, short-term crisis benefits, and other services funded in cash by the TANF program that do not fall within the TANF program's definition of ''assistance,'' as described in paragraph (a)(2) of this section.

(d) Cash benefits that have been earned continue to be irrelevant to the public charge ground of inadmissibility. A few examples of such earned benefits that will not be considered include benefits under Title II of the Social Security Act, 42 U.S.C. 401 *et seq.*,

government pension benefits, and veterans' benefits.

§ 237.14 Are there any forms of public benefits that I can receive without becoming deportable as a public charge?

(a) The only benefits that are relevant to the public charge decision are public cash assistance for income maintenance and institutionalization for long-term care at Government expense. Institutionalization for short periods for rehabilitation purposes will not be considered. Non-cash public benefits are not considered because they are of a supplemental nature and do not demonstrate primary dependence on the Government for subsistence.

(b) Although it is not possible to list all of the non-cash public benefits that will not be considered, you will not risk being found deportable as a public charge by receiving non-cash benefits under the following programs or benefit categories:

(1) The Food Stamp program, 7 U.S.C. 2011, *et seq.*,

(2) The Medicaid program, 42 U.S.C. 1396, *et seq.* (other than payments under the Medicaid program for long-term institutional care);

(3) The Children's Health Insurance Program (CHIP), 42 U.S.C. 1397aa, *et seq.*;

(4) Health insurance and health services (other than public benefits for costs of institutionalization for long-term care), including, but not limited to, emergency medical services, public benefits for immunizations and for testing and treatment of symptoms of communicable diseases, and use of health clinics;

(5) Nutrition programs, including, but not limited to, the Special Supplemental Nutrition Program for Women, Infants and Children (WIC), 42 U.S.C. 1786; and programs that operate under the National School Lunch Act, 42 U.S.C. 1751 *et seq.*; the Child Nutrition Act, 42 U.S.C. 1771 *et seq.*; and the Emergency Food Assistance Act, 7 U.S.C. 7501 *et seq.*;

(6) Emergency disaster relief;

(7) Housing benefits;

(8) Child care services;

(9) Energy benefits, such as LIHEAP, 42 U.S.C. 8621 *et seq.*;

(10) Foster care and adoption benefits;

(11) Transportation vouchers or other non-cash transportation services;

(12) Educational benefits, including benefits under the Head Start Act and aid for elementary, secondary, or higher education;

(13) Non-cash benefits or services funded by the TANF program;

(14) Job training programs;

(15) State and local supplemental, non-cash benefits that serve purposes similar to those of the Federal programs listed in this paragraph;

(16) Any other Federal, State, or local public benefit program, under which benefits are provided in-kind, through vouchers, or any other medium of exchange other than payment of cash benefits for income maintenance to the eligible person.

§ 237.15 What other conditions must be met for me to be deportable as a public charge?

(a) In addition to the requirements of section 237(a)(5) of the Act, and except as provided in paragraph (b) of this section, you are not deportable as a public charge unless the Service shows that:

(1) The Government entity that provided, or is providing, either the public cash assistance for your income maintenance as described in §§ 237.12 and 237.13 of this part or the costs of institutionalization for your long-term care as described in § 237.12, has a legal right to seek repayment of those benefits against either you or another obligated party, such as a family member or a sponsor; and

(2) Within 5 years of your entry to the United States, the public entity providing the benefit demanded that you or another obligated party repay the benefit; and

(3) You or another obligated party failed to repay the benefit demanded;

(4) There is a final administrative or court judgment obligating you or another party to repay the benefit. (As long as the demand for repayment under paragraph (a)(2) of this section occurred within 5 years of your entry, the final judgment may be rendered against you or another obligated party at any time thereafter);

(5) The benefit-granting agency, or other applicable Government entity, has taken all actions necessary to enforce the judgment, including all collection actions.

(b) If a legal right to seek repayment of the public benefits described in §§ 237.12 and 237.13 of this part is established, but the Service proves that there was no one against whom repayment could be enforced, thereby making a demand for repayment futile, then the Service need not show that a demand was made and a final judgment for repayment of the public benefits rendered.

§ 237.16 Is the ''Affidavit of Support Under Section 213A of the Act'' (Form I–864) relevant to removal on public charge grounds of deportation?

(a) The ''Affidavit of Support Under Section 213A of the Act'' (Form I–864) required under section 213A of the Act and 8 CFR part 213a is relevant to removal on the public charge grounds for deportation in certain circumstances. Section 213A of the Act provides that the Affidavit of Support may support a legally enforceable claim against your sponsor(s) for repayment of certain Federal, State, or local means-tested public benefits provided to you. You may be found deportable on public charge grounds if the Service proves that:

(1) An Affidavit of Support under Section 213A of the Act and 8 CFR part 213a was filed on your behalf and is currently in effect; and

(2) Within 5 years after your admission to the United States, you

(i) Obtained SSI, cash TANF benefits, or other Federal, State, or local public benefits that were cash assistance for income maintenance purposes and that, at the time the Affidavit of Support was signed, had been designated as ''means-tested public benefits'' by the Government entity responsible for administering the benefit; or

(ii) Were institutionalized for long-term care at Government expense (other than imprisonment for conviction of a crime); and

(3) Such benefits have not been repaid as provided in § 237.15.

§ 237.17 Does the 5-year period in section 237(a)(5) of the Act run only from my first entry into the United States?

(a) The 5-year period begins again each time you enter the United States, unless you are a returning alien lawfully admitted for permanent residency (an ''LPR'') who is not considered an applicant for admission as described in paragraph (b) of this section.

(b) If you have been lawfully admitted for permanent residence (LPR status), you are not considered an applicant for admission upon return to the United States after a trip abroad unless you are covered by one of the categories specified in section 101(a)(13)(C) of the Act, including an absence of 180 days or more from the United States. If you are not covered by one of the categories listed in section 101(a)(13)(C) of the Act, the 5-year period for public charge deportation purposes would still be counted from your last entry to the United States.

§ 237.18 Will I be considered a public charge because my spouse, parent, child, or other relative has accepted public benefits or has become a public charge?

(a) The fact that one, or all, of your close relatives has received public cash benefits for income maintenance, or has become a public charge, will not make you deportable as a public charge, unless the evidence shows that you,

individually, have become a public charge.

(b) Public cash benefits for income maintenance received by your relatives will not be attributed to you for deportation purposes, unless they also represent your sole support. If such benefits are attributed to you because they are your sole support, all of the requirements of §§ 237.11, 237.15, and 237.16 of this part (if § 237.16 is applicable to your case) must also be met before you may be found deportable as a public charge.

Subpart B—[Reserved]

Dated: May 20, 1999.

Janet Reno,

Attorney General.

Appendix to Preamble

The following are the texts of letters received by Immigration and Naturalization Service officials from officials from the Department of Health and Human Services, the Social Security Administration, and the Department of Agriculture.

BILLING CODE 4410–10–U

The Deputy Secretary of Health and Human Services

Washington, D.C. 20201

March 25, 1999.

Commissioner Doris Meissner,
Immigration and Naturalization Service, Department of Justice, 425 Eye Street NW., Washington, D.C. 20536

Dear Commissioner Meissner: According to my colleagues at the U.S. Department of Health and Human Services (HHS), I understand that the Immigration and Naturalization Service (INS) plans to issue some form of guidance explaining the public charge ground of inadmissibility to and deportation from the United States. The guidance is critical to clarifying for immigrant families and communities what the potential immigration consequences are of receiving certain government benefits.

Over the past several years, there has been a significant decline in the receipt of welfare, health, and nutrition benefits by immigrant families and their citizen children, even though many of these families (or individuals within these families) are eligible for such benefits. HHS has received numerous reports from state and local government officials, program administrators, and community leaders around the country that a significant factor contributing to this decline in participation is the confusion and fear that immigrant families have in relation to public charge policies. There is particularly concern that this lack of access to critical services may lead to negative health outcomes for immigrant families and children, as well as potentially undermining public health.

HHS supports the efforts of INS and the Department of Justice to clarify the meaning of ''public charge'' in a way that meets the objectives of both the immigration laws and the Administration's health policies. The INS, as we understand it, is proposing to define ''public charge'' to mean an alien who has, or is likely to become, ''primarily dependent on the government for subsistence.'' An important issue that has arisen is receipt of which benefits is evidence of this dependency. HHS agrees that in making such an assessment about an individual, it is important to articulate a principle that distinguishes clearly those public benefits that should be relevant to public charge determinations from those that should not be of any consequence. We further understand that under immigration law, receipt of benefits is only one of many factors that INS and Department of State officers consider in making public charge determinations.

This letter responds to your request for advice from benefit-granting agencies with expertise in subsistence matters about which types of benefit receipt would demonstrate that an individual is primarily dependent on the government for his or her support. The best available evidence of whether someone is primarily dependent on government assistance for subsistence is whether that individual is receiving *cash assistance for income maintenance purposes,* (i.e., cash assistance under the Temporary Assistance to Dependent Families program (TANF)), the Supplemental Security Income (SSI), and state general assistance programs), or is institutionalized in a long-term care facility at government expense.[1]

The receipt of cash benefits or long-term care institutionalization are the most effective proxies for identifying an individual as one who is primarily dependent on government assistance for subsistence.

First, nearly all individuals or families receiving cash assistance for purposes of income maintenance are also receiving other non-cash support benefits and services as well, (e.g., Medicaid, Food Stamps, housing assistance, child care, energy assistance), and they are likely not to be receiving any income from other sources. For example, virtually all of those receiving AFDC cash assistance in 1995 were also receiving Medicaid (97 percent) and Food Stamps (89 percent), (1998 Green Book). By the end of 1997, 82 percent of families receiving TANF reported having no earned income. (AFDC/TANF Quality Control Data). In these cases, the individuals or families receiving cash assistance would meet the standard of ''primarily dependent on government assistance for subsistence.''

Second, it is extremely unlikely that an individual or family could subsist on a *combination* of non-cash support benefits or services alone. Without cash assistance, it is extremely unlikely that the individual or family could meet the basic subsistence requirements related to food, clothing and shelter. These non-cash assistance programs typically provide only supplemental and marginal assistance, (e.g., Food Stamps, housing assistance, energy assistance) or services, (e.g., health insurance coverage, medical care and child care) that do not directly provide subsistence and together are insufficient to provide primary support to an individual or a family absent additional income. Moreover, programs such as Child Care enable parents to work and earn income in order to be self-sufficient. In addition, depending on eligibility rules, some programs such as Medicaid, may or may not be available to all family members or for all periods of time. HHS is unable to conceive of a situation where an individual, other than someone who permanently resides in a long-term care institution, could support himself or his family solely on non-cash benefits so as to be primarily dependent on the government. Thus, virtually all families receiving non-cash support benefits, *but not receiving cash assistance,* must rely on other income (usually earned income) in order to meet their subsistence needs.

Finally, non-cash support benefits and services are generally designed to supplement and support the diet, health, and living conditions of recipients, many of whom are low- to middle-income working families, and are generally provided as vouchers or direct services.[2] Also, these non-cash services often have a primary objective of supporting the overall community or public health, by making services generally available to everyone within a community, providing infrastructure development and support, or providing stable financing for services and systems that benefit entire communities. Compared to cash benefit programs, non-cash support programs generally have more generous eligibility rules so as to be available to individuals and families with incomes well above the poverty line. For example, states have a great deal of flexibility to set income eligibility rules under Medicaid and the Children's Health Insurance Program, and many states cover certain populations, such as children and pregnant women, up to 200 percent of the poverty line and sometimes higher. Moreover, in 1997 nearly half (49 percent) of Medicaid recipients were not receiving any cash assistance (SSI or AFDC/TANF), and two-thirds (64 percent) of adult recipients reported working full or part time. (March 1998 Current Population Survey). Similarly, about one-third of Food Stamp recipients in 1997 did not receive cash assistance and

[1] Note that SSI is administered by the Social Security Administration, and general assistance programs are administered by the several states. However, we believe these are the relevant cash assistance programs that support the analysis in this letter.

[2] Although most support programs provide vouchers or direct services, it should be noted that at HHS some of these programs can also provide cash for the reimbursement of specific costs. For example, the Low Income Home Energy Assistance Program (LIHEAP) and the Child Care Development Fund (CCDF) are authorized to make cash payments, but these payments are for specific purposes other than income maintenance. LIHEAP is authorized to provide cash payments for energy costs, and providers do so in very limited circumstances such as when a vendor (such as a log supplier) does not have an agreement with the administering entity, (i.e., state, county, or nonprofit organization). In the case of CCDF, in FY 1997 that program gave cash payments to recipients in 7% of all cases specifically for the reimbursement of beneficiaries' child care costs. Under the proposal articulated here, cash payments in these programs would not give rise to a public charge determination since such payments are not provided for income maintenance purposes.

reported earnings in 1997. (Characteristics of Food Stamp Recipients, 1998). In these cases the individual or family receiving non-cash benefits, but not receiving cash assistance, would not meet the standard of ''primarily dependent on government assistance for subsistence.''

The one circumstance in which receipt of non-cash benefits would indicate that an individual is primarily dependent on government assistance for subsistence, and therefore potentially a public charge, is the case of an individual permanently residing in a long-term care institution and relying on government assistance for those long-term care services. In this case, all of the individual's basic subsistence needs are assumed by the institution, and the individual has no need for cash assistance. Aside from this narrow instance, the receipt of a non-cash support benefits and services should not be relevant to a public charge determination under INS' proposed definition.

Based on these considerations, HHS recommends that benefit receipt should only be relevant to public charge determinations when an individual receives the benefits defined below:

1. Cash-Assistance for Income Maintenance: Cash assistance under TANF, SSE, and state/local equivalents (including state-only TANF).

2. Long-Term Institutionalized Care: The limited case of an alien who permanently resides in a long-term care institution (e.g., nursing facilities) and whose subsistence is supported substantially by public funds (e.g., Medicaid).

Thank you for your time and consideration. Please let me know if I or HHS staff can be of any further assistance regarding this important policy issue.

Sincerely,

Kevin Thurm,

Deputy Secretary of Health and Human Services.

Social Security

May 14, 1999.

Dr. Robert L. Bach,

Executive Associate Commissioner for Office of Policy and Planning, Immigration and Naturalization Service, 425 I Street, Washington, DC 20536

Dear Dr. Bach: We understand that the Immigration and Naturalization Service (INS) is planning to publish proposed regulations on the definition of ''public charge'' for purposes of determining who can be admitted to and who can be deported from the United States under the provisions in sections 212(a)(4) and 237(a)(5) of the Immigration and Nationality Act (INA). More specifically, INS plans to define ''public charge'' to mean an individual who ''has become'' or is ''likely to be primarily dependent on the government for subsistence.'' You have asked the Federal agencies that administer public benefit programs whether a noncitizen's receipt of the benefits might indicate that the noncitizen primarily relied on these benefits for subsistence. This letter is in response to that request.

We agree that the receipt of Supplemental Security Income (SSI) could show primary dependence on the government for subsistence fitting the INS definition of public charge *provided that* all of the other factors and prerequisites for admission or deportation have been considered or met. We believe, however, that many mitigating factors discussed below, coupled with specific public charge exemptions under immigration law, also discussed, would result in a minimal impact of the public charge provisions on the SSI noncitizen population.

The SSI program is a nationwide Federal means-tested income maintenance program administered by the Social Security Administration (SSA). SSI guarantees a minimum level of income for needy aged, blind, and disabled individuals. The program is designed to provide assistance for individuals' basic needs of food, clothing, and shelter. Individuals eligible for SSI are among the most vulnerable people in the United States. For them, SSI is truly the program of last resort and is the safety net that protects them from complete impoverishment.

Lawful permanent residents and noncitizens permanently residing in the United States under color of law were eligible for SSI when the program began in 1974. The 1996 welfare reform legislation (Public Law 104–193) restricted SSI eligibility for qualified noncitizens to those who were in specific, limited categories, such as refugees and asylees, individuals who served in the U.S. military, and lawful permanent residents who worked in the United States for at least 40 quarters. Subsequent legislation in 1997 and 1998 expanded the categories to include individuals who had received SSI or were in the United States prior to enactment of welfare reform and who are disabled or blind. These later laws added other discrete classes of noncitizens as well. Still, the categories of noncitizens eligible for SSI are limited.

Under INS' proposed rule, the receipt of SSI could lead to a determination that a person is or is likely to be a public charge. As mentioned earlier, only limited, specified categories of noncitizens are eligible for SSI. Our analysis of the proposed INS public charge rule leads us to conclude that many of these SSI-eligible noncitizen categories would either be exempt from the public charge provisions by law, or would not be deemed public charges because of the operation of other factors required under the proposed rule. For example, aged, blind, and disabled refugees, asylees, Amerasian immigrants, Cubans and Haitians may be eligible for SSI benefits after they have been in the United States for 30 consecutive days. We understand that the first three categories and certain Cuban/Haitians are exempt from the proposed public charge policy under other provisions in immigration law. In addition, the public charge provision for deportation under section 237(a)(5) of the INA, applies only in cases in which a noncitizen became a ''public charge from causes not affirmatively shown to have arisen since entry.'' Many individuals who are eligible for SSI are healthy when they first come to the United States but become aged, blind or disabled after they enter. If these conditions occurred after entry giving rise to the use of the public benefits, we understand that they would not be deportable on public charge grounds.

Another mitigating factor in the proposed public charge rule as it applies to SSI beneficiaries involves reimbursement of SSI benefits received. As we understand the proposed rule, in order for a noncitizen to be determined deportable on public charge grounds, there must in part be a legal obligation for the individual or his or her sponsor to repay the benefits received during the first 5 years after entry into the United States. SSA has no authority to require the individual to repay the benefits for which they are entitled. Thus, nonsponsored noncitizens would not be required to reimburse, and the public charge provision for deportation would not apply to them. However, sponsors who have signed a new affidavit of support under section 213A of the INA are required to reimburse SSA for SSI benefits paid to the sponsored noncitizen. Only if the sponsor refuses to repay would the SSI beneficiary potentially be subject to deportation.

Even for those individuals who do not come under one of the exempted categories, the draft rules state that the *mere* receipt of SSI does not automatically make a noncitizen inadmissible, ineligible to adjust status, or subject to deportation. In the admission context, the INS plans to apply a ''totality of circumstances'' test which includes the consideration of several mandatory statutory factors. Examples of such factors include an alien's age, health, family status, assets, resources, financial status, education and skills. No single factor, other than the lack of a sufficient affidavit of support, if required, will determine whether a noncitizen is likely to be a public charge, including past or current receipt of SSI. In the deportation context, mere receipt of benefits also will not make a person deportable. There must also have been a demand for repayment by the benefit agency, failure to meet that demand by the alien or other obligated party, a final judgment, and all steps taken to enforce that judgment. Without the satisfaction of these prerequisites, the alien is not deportable.

Further, we understand that INS will take into account the specific circumstances surrounding the past or current receipt of SSI. For example, if a noncitizen received SSI in a past period of unemployment, but he or she is currently working and is self-supporting, a public charge determination may not be made. Every admission decision is made on a case-by-case basis carefully balancing the totality of the circumstances. We also understand that INS will accord less significance to the receipt of SSI if a noncitizen received SSI sometime ago or a noncitizen received or is receiving a small amount of SSI.

INS' proposed rule concerning deportations on public charge grounds indicates that such deportations are rare since the standards are very strict. We believe that these strict criteria would result in the deportation provision rarely being applied against a noncitizen SSI beneficiary.

Thank you for the opportunity to comment on this important matter.

Sincerely,

Susan M. Daniels,

Deputy Commissioner for Disability and Income Security Programs.

Department of Agriculture

Office of the Secretary, Washington, D.C. 20250

April 15, 1999.

Honorable Doris M. Meissner,
Commissioner, Immigration and Naturalization Service, 425 I Street, NW, Room 7100, Washington, D.C. 20536

Dear Commissioner Meissner: This is in reference to a letter that the Department of Health and Human Services recently sent you suggesting that the receipt of public benefits should only be relevant to a public charge determination when an individual receives cash assistance for income maintenance or long-term institutionalized care. We have reviewed the letter and are in agreement with its contents.

We believe that neither the receipt of food stamps nor nutrition assistance provided under the Special Nutrition Programs administered by this Agency should be considered in making a public charge determination for purposes of admission, deportation, or adjustment of an alien's status.

Please let us know if we can be of any assistance regarding this matter.

Sincerely,

Shirley R. Watkins,

Under Secretary, Food, Nutrition and Consumer Services.

[FR Doc. 99–13188 Filed 5–25–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 1988–99]

Field Guidance on Deportability and Inadmissibility on Public Charge Grounds

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: The Department of Justice (Department) is publishing a proposed rule in this issue of the **Federal Register** which proposes to establish clear standards governing a determination that an alien is inadmissible or ineligible to adjust status, or has become deportable, on public charge grounds.

Before the proposed rule becomes final, the Immigration and Naturalization Service (Service) is publishing its field guidance on public charge issues as an attachment to this notice. This is necessary to help alleviate public confusion over the meaning of the term ''public charge'' in immigration law and its relationship to the receipt of Federal, State, and local public benefits. This field guidance will also provide aliens with better guidance as to the types of public benefits that will and will not be considered in public charge determinations.

DATES: This notice and field guidance are effective May 21, 1999.

FOR FURTHER INFORMATION CONTACT: Sophia Cox or Kevin Cummings, Immigration and Naturalization Service, 525 I Street, NW, Office of Adjudications, Washington, DC 20536, telephone (202) 514–4754.

SUPPLEMENTARY INFORMATION: Recent immigration and welfare reform laws have generated considerable public confusion about the relationship between the receipt of Federal, State, and local public benefits and the meaning of ''public charge'' in immigration statutes governing deportation, admissibility, and adjustment of status. The Department decided to publish a proposed rule defining ''public charge'' in order to reduce the negative public health consequences generated by the existing confusion and to provide aliens with better guidance as to the types of public benefits that will and will not be considered in public charge determinations.

In addition, the Service has issued guidance to its field officers on a variety of issues related to public charge determinations. That field guidance is included as an attachment to this notice to provide additional information to the public on the Service's implementation of the public charge provisions of the immigration laws.

Dated: May 20, 1999.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

U.S. Department of Justice, Immigration and Naturalization Service

May 20, 1999.

Memorandum for All Regional Directors

From: Michael A. Pearson, Executive Associate Commissioner, Office of Field Operations

Subject: *Public Charge: INA Sections 212(a)(4) and 237(a)(5)*

This memorandum provides guidance concerning the public charge ground of inadmissibility, section 212(a)(4) of the Immigration and Nationality Act (INA), and the related deportation charge under section 237(a)(5) of the INA. It also discusses the impact of these subsections of the new enforceable Affidavit of Support prescribed by section 213A of the INA, established by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) and welfare reform laws.[1]

IIRIRA and the recent welfare reform laws have sparked public confusion about the relationship between the receipt of federal, state, local public benefits and the meaning of ''public charge'' under the immigration laws. Accordingly, the Service is taking two steps to ensure the accurate and uniform application of law and policy in this area. First, the Service is issuing this memorandum which both summarizes longstanding law with respect to public charge and provides new guidance on public charge determinations in light of the recent changes in law. In addition, the Service is publishing a proposed rule for notice and comment that will for the first time define ''public charge'' and discuss evidence relevant to public charge determinations. Although the definition of public charge is the same for both admission/adjustment and deportation, the standards of public charge is the same for both admission/adjustment and deportation, the standards applied to public charge adjudications in each context are significantly different and are addressed separately in this memorandum. After discussing the definition and standards for public charge determinations, the memorandum goes on to discuss exceptions from public charge determinations and particular types of benefits that may and may not be considered for public charge purposes, in addition to other issues.

I. Definition of ''Public Charge''

The Service is publishing a rule for notice and comment that defines ''public charge'' or purposes of both admission/adjustment and deportation. That rule proposes that ''public charge'' means an alien who has become (for deportation purposes) or who is likely to become (for admission/adjustment purposes) ''primarily dependent on the government for subsistence, as demonstrated by either (i) the receipt of public cash assistance for income maintenance or (ii) institutionalization for long-term care at government expense.'' Institutionalization for short periods of rehabilitation does not constitute such primary dependence.

The Service is adopting this definition immediately, while allowing the public an opportunity to comment on the proposed rule. Accordingly, officers should not initiate or pursue public charge deportation cases against aliens who have not received public cash benefits for income maintenance or who have not been institutionalized for long-term care. Similarly, officers should not place any weight on the receipt of non-cash public benefits (other than institutionalization) or the receipt of cash benefits for purposes other than for income maintenance with respect to determinations of admissibility or eligibility for adjustment on public charge grounds. Supplementary guidance will be issued, as necessary, in conjunction with publication of a final rule.

See section 6, below, for a more detailed discussion of particular types of benefits that may and may not be considered for public charge purposes.

2. Admission and Adjustment of Status

Under INA section 212(a)(4), an alien seeking admission to the United States or seeking to adjust status to that of an alien lawfully admitted for permanent residence is inadmissible if the alien, ''at the time of application for admission or adjustment of status, is likely at any time to become a public charge.'' [2] IIRIRA amended section 212(a)(4) of the INA to codify the factors relevant to a public charge determination. Officers must consider, at a minimum, the alien's age, health, family status, assets, resources, and financial status, and education and skills when making a public charge inadmissibility determination. Every denial order based on public charge must reflect consideration of each of these factors and specifically articulate the reasons for the officer's determination.

The most significant change to section 212(a)(4) under IIRIRA is the creation of a new affidavit of support (AOS), which, coupled with new section 213A, imposes on the sponsor a legally enforceable support obligation. The law requires that sponsors demonstrate that they are able to maintain the sponsored alien at an annual income of not less than 125 percent of the federal poverty level. The AOS requirement applies to all immediate relatives (including orphans), family-based immigrants, and those employment-based immigrants who will work for a relative or for a firm in which a U.S. citizen or lawful permanent resident (LDR) relative holds a 5 percent or more ownership interest. Immigrants seeking

[1] The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, as amended by the Balanced Budget Act of 1997, Pub. L. 105–33; the Agricultural Research, Extension, and Education Reform Act of 1998, Pub. L. 105–185; and the Noncitizen Technical Amendments Act of 1998, Pub. L. 105–306.

[2] See Section 4 below on categories of aliens who are not subject to public charge determinations.

admission or adjustment of status in these categories are inadmissible under subparagraphs (C) and (D) of the modified section 212(a)(4), respectively, unless an appropriate sponsor has completed and filed a new AOS if the application for an immigrant visa or adjustment of status was filed on or after December 19, 1997. Note that this requirement applies to these aliens *even if,* under the factors codified in section 212(a)(4)(B), the adjudicator would ordinarily find that the alien is not likely to become a public charge. The only exceptions from this requirement are for qualified battered spouses and children (and their eligible family members) and for qualified widow(er)s of citizens, *if* these aliens have filed visa petitions on their own behalf. Where such an AOS has been filed on an alien's behalf, it should be considered along with the statutory factors in the public charge determination.

The standard for adjudicating inadmissibility under section 212(a)(4) has been developed in several Service, BIA, and Attorney General decisions and has been codified in the Service regulations implementing the legalization provisions of the Immigration Reform and Control Act of 1986. These decisions and regulations, and section 212(a)(4) itself, create a ''totality of the circumstances'' test.

In determining whether an alien is likely to become a public charge, Service officers should assess the financial responsibility of the alien by examining the ''totality of the alien's circumstances *at the time of his or her application* * * * The existence or absence of a particular factor *should never be the sole criterion* for determining if an alien is likely to become a public charge. The determination of financial responsibility *should be a prospective evaluation* based on the alien's age, health, family status, assets, resources and financial status, education, and skills, among other factors.[3] An alien may be considered likely to become a public charge even if there is no legal obligation to reimburse the benefit-granting agency for the benefits or services received, in contrast to the standards for deportation, discussed below.[4]

In addition, the Attorney General has ruled that ''[s]ome specific circumstances, such as mental or physical disability, advanced age, or other fact reasonably tending to show that the burden of supporting the alien is likely to be cast on the public, must be present. A healthy person in the prime of life cannot ordinarily be considered likely to become a public charge, especially where he has friends or relatives in the United States who have indicated their ability and willingness to come to his assistance in case of an emergency.'' [5] Under the new AOS rules, all family-based immigrants (and some employment-based immigrants) will have a sponsor who has indicated an ability and willingness to come to the immigrant's assistance.

Current Receipt of Cash Benefits for Income Maintenance and Current Institutionalization

If at the time of application for admission or adjustment an alien is receiving a cash public assistance for income maintenance or is institutionalized for long-term care (as discussed in section 6, below), that benefit should be taken into account under the totality of the circumstances test, along with the other statutory factors under section 212(a)(4)(B)(i) and any AOS. It is possible, for example, that an alien receiving a small amount of cash for income maintenance purposes could be determined not likely to become a public charge due to other positive factors under the totality of the circumstances test. Aliens should not be asked to repay the cost of any benefits received in order to qualify for admission or adjustment.

Current receipt of non-cash benefits or the receipt of special-purpose cash benefits not for income maintenance should not be taken into account under the totality of the circumstances test in determining whether the alien is likely to become a public charge.

Past Receipt of Cash Benefits for Income Maintenance and Past Institutionalization

Past receipt of cash income-maintenance benefits does not automatically make an alien inadmissible as likely to become a public charge, nor does past institutionalization for long-term care at government expense. Rather this history would be one of many factors to be considered in applying the totality of the circumstances test. In the case of an alien who has received cash income-maintenance benefits in the past or who has been institutionalized for long-term care at government expense, a Service officer determining admissibility should assess the totality of the alien's circumstances at the time of the application for admission or adjustment and make a forward-looking determination regarding the likelihood that the alien will become a public charge after admission or adjustment. The longer ago an alien received such cash benefits or was institutionalized, the less weight these factors will have as a predictor of future receipt. Also, the ''length of time an applicant has received public cash assistance is a significant factor.'' [6] The longer an alien has received cash income-maintenance benefits in the past and the greater the amount of benefits, the stronger the implication that the alien is likely to become a public charge. The negative implication of past receipt of such benefits or past institutionization, however, may be overcome by positive factors in the alien's case demonstrating an ability to be self-supporting. For instance, a work-authorized alien who has current full-time employment or an AOS should be found admissible despite past receipt of cash public benefits, unless there are other adverse factors in the case.

Past receipt of non-cash benefits (other than institutionalization for long-term care) should not be taken into account under the totality of the circumstances test. Similarly, past receipt of special-purpose cash benefits not for income maintenance should be not taken into account.

Repayment of Public Benefits

IIRIRA did not create any requirement that aliens repay benefits received in the past in order to avoid being found inadmissible on public charge grounds, nor has such a requirement existed in the past. Accordingly, officers should not instruct or suggest that aliens must repay benefits previously received as a condition of admission or adjustment, and they should not request proof of repayment as a condition for finding the alien admissible to the United States. (See INS Memorandum. ''Public Charge. INA Sections 212(a)(4) and 237(a)(5)—Duration of Departure for LPRs and Repayment of Public Benefits,'' dated December 16, 1997, for further discussion.)

Repayment is relevant to the public charge inadmissibility determination only in very limited circumstances. If at the time of application for admission or adjustment of status the alien is *deportable* on public charge grounds under section 237(a)(5) of the INA due to an outstanding public debt for a cash benefit or the costs of institutionalization, then the alien is inadmissible. Only a debt that satisfies the three-part test under section 237(a)(5), described below, will render an alien deportable as a public charge and therefore ineligible for admission or adjustment. If the debt is paid, then the alien will no longer be inadmissible based on the debt, and the usual totality of the circumstances test would apply. While the Service may not demand

[3] 8 C.F.R. § 245a.4(b)(11)(iv)(B), and see INA § 212(a)(4)(B). The federal courts have also endorsed this ''totality of the circumstances'' test. See, e.g., *Zambrano* v. *INS*, 972 F.2d 1122 (9th Cir. 1992), *judgment vacated on other grounds, 509 U.S. 918 (1993).*

[4] *Matter of Harutunian*, 14 I. & N. Dec. 583 (BIA 1974) (interpreting § 212(a)(15), recodified as § 212(a)(4)).

[5] *Matter of Martinez-Lopez*, 10 I&N 409, 421–422 (AG, Jan. 6, 1964).

[6] 8 CFR § 245a.2(k)(4).

that an alien repay a public debt which meets the three-part test, it may inform an alien that if the alien does not repay the debt, he or she will continue to be inadmissible to the United States. Adjudicators should make sure also to inform aliens that even if they pay the debt, they may still be determined to be inadmissible as an alien likely to become a public charge under the totality of the circumstances test.

If an INS officer finds evidence of possible benefit fraud in the course of performing his or her immigration duties, that information should be forwarded through official channels to the appropriate benefit-granting agency for possible investigation and enforcement action. In such cases, absent a determination of fraud by the benefit-granting agency, immigration benefits to which the alien is otherwise entitled should not be withheld or denied.

3. Public Charge Determination—Deportation

The determination of whether an alien is subject to removal under section 237(a)(5) is quite different from the determination of whether an alien is inadmissible under section 212(a)(4), although in both contexts the focus is on the receipt of cash benefits for income maintenance purposes. Section 237(a)(5) of the INA states that ''[a]ny alien who, within 5 years after the date of entry, has become a public charge from causes not affirmatively shown to have arisen since entry is deportable.'' This section requires a two-step determination. First, the Service must determine whether the alien has become a public charge within 5 years after the date of entry.[7] Second, if the alien has become a public charge, then the Service must determine whether the alien has demonstrated that the circumstances that caused the alien to become a public charge arose after the alien's entry into the United States. An alien who can make such a showing is not removable under section 237(a)(5).

We respect to whether an alien has become a public charge, the Attorney General has determined that the mere receipt of a public benefit by an alien does not make an alien a public charge for purposes of deportation under section 237(a)(5). Rather, in *Matter of B,* 3 I. & N. Dec. 323 (BIA and AG 1948),[8] the Attorney General established a strict three-part test to determine if an alien has become a public charge. In order for an alien to become a public charge under section 237(a)(5), the following 3 requirements must be met:

(1) The state or other government entity that provides the benefit must, by law, impose a charge or fee for the services rendered to the alien. In other words, the alien or designated relatives or friends must be legally obligated to repay the benefit-granting agency for the benefits or services provided, if there is no reimbursement requirement under law, the alien cannot be said to be a public charge.

(2) The responsible benefit-granting agency officials must make a demand for payment for the benefit or services from the alien or other persons legally responsible for the debt under federal or state law (e.g., the alien's sponsor).

(3) The alien and other persons legally responsible for the debt fail to repay after a demand has been made.

The demand for repayment must be made within 5 years of an alien's entry in order to render the alien deportable as a public charge.[9] In addition, the Service has determined that, in order for an alien to become deportable as a public charge as a result of the failure of the sponsor to repay the agency, the benefit-granting agency must take all available actions to collect from the sponsor. This includes filing an action in the appropriate court and taking all steps available under law to enforce a final judgment against the sponsor or other obligated party.

Deportations based on public charge grounds have been rare, and the new immigration and welfare laws are not likely to change this. First, for aliens who are not sponsored under the new AOS, it is unlikely that there will be a legal obligation to repay public benefits or that the benefit-granting agency will make a demand for repayment. Thus, just as in the past, the first two prongs of the *Matter of B* test generally will not be satisfied. Only aliens who apply for immigrant visas or adjustment of status on or after December 19, 1997, may be sponsored under the new, enforceable AOS, which could satisfy the standards for deportation under *Matter B.* However, under the new welfare reform laws, these same aliens will generally be barred from receiving federal means-tested public benefits for the first 5 years after admission or adjustment—the critical period for purposes of deportability.

In addition, under the ''deeming'' rules, and the sponsor's spouse's income and resources will be attributed to the alien in assessing his or her eligibility to receive a means-tested benefit, which would normally raise the alien's income over the benefit eligibility threshold. Only if an immigrant receives a cash benefit for income-maintenance within 5 years of entry or is institutionalized for long-term care (despite the eligibility limitations), there is a demand for repayment by the benefit-granting agency, and the sponsor or other responsible party fails to repay, can the immigrant become deportable as a public charge. However, even in this case, the alien must be given an opportunity to prove that he or she became a public charge for causes that arose after entry. If an alien can make such a showing, he or she will not be deportable as a public charge. Thus, the Service is unlikely to see a significant increase in cases of deportability on public charge grounds.

4. Exceptions From Public Charge Determinations

Under the new laws, refugees and asylees remain exempt from public charge determinations for purposes of admission and adjustment of status pursuant to sections 207, 208, and 209 of the INA. Similarly, Amerasian immigrants are exempt from the public charge ground of inadmissibility for their initial admission.[10] In addition, various statutes contain exceptions to the public charge ground of inadmissibility for aliens eligible for benefits under their provisions, including the Cuban Adjustment Act (CAA), the Nigaraguan Adjustment and Central American Relief Act (NACARA), and the Haitian Refugee Immigration Fairness Act (HRIFA).[11] These laws provide avenues of adjustment for certain aliens—including Cuban/Haitian entrants,[12] who remain eligible for many public benefits under welfare reform—without subjecting them to screening as potential public charges.

Most LPRs who have been outside the United States for 180 days or less are not applicants for admission and therefore are not subject to the grounds of inadmissibility, pursuant to section 101(a)(13)(C) of the INA.[13] Accordingly, absent an indication that they may be applicants for admission, such LPRs should not routinely be questioned on issues related to the likelihood that they will become a public charge.

Under section 249 of the INA, which allows aliens who have been in the United States since January 1, 1972, to ''register'' as LPRs, public charge is not a factor in determining eligibility. Receipt of public benefits is not an adverse factor in meeting the ''good moral character'' requirement for registry, absent evidence that an applicant procured or attempted to procure such benefits through fraud or misrepresentation.

5. Receipt of Benefits by Children and Other Family Members

The Service has addressed the issue of receipt of benefits by children and other family members in a number of memoranda on the issue of public charge for aliens applying for legalization under section 245A of the INA. The Service's approach to the receipt of benefits by family members in the legalization context has been upheld in federal court and should govern the question for general public charge determinations as

[7] The 5-year period states again each time an alien enters the United States after a departure, except for LPRs who are not applicants for admission unless they meet the terms of section 101(a)(13)(C).

[8] While this decision concerned the public charge provision of the 1917 Act, the test established continues to be valid under current law, which is substantially the same as the 1917 law. See *Matter of L.* 6 I. & N. Dec. 349 (BIA 1954), and **Matter of Harutunian** 14 I. & N. Dec. 583 (BIA 1974).

[9] *Matter of L,* 6 I. & N. Dec. 349 (BIA 1954).

[10] Amerasian immigrants are defined in section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1988.

[11] See *Matter of Mesa,* 12 I. & N. Dec. (Dep. Assoc. Comm. 1967) (public charge exception under the CAA); NACARA, Pub. L. 105–100, section 202(a); HRIFA, Pub. L. 105–277, Title IX, section 902.

[12] Cuban/Haitian entrants are defined in section 501(c)(e) of the Refugee Education Assistance Act of 1980.

[13] Section 101(a)(13)(C) provides that an LPR seeking admission to the U.S. is not an applicant for admission unless the alien: (i) has abandoned or relinquished that status; (ii) has been absent for more than 180 days; (iii) has engaged in illegal activity after leaving the U.S.; (iv) left the U.S. while in removal proceedings; (v) has committed certain offenses in the U.S.; or (vi) is attempting to enter other than at a port of entry or has not been admitted to the U.S. after inspection and authorization.

well.[14] The rule is well summarized in an April 21, 1988, memorandum from the Associate Commissioner for Examinations to the Regional Commissioners.

As a general rule, the receipt of * * * benefits by a member of the * * * applicant's family is not attributable to the applicant for purposes of determining the likelihood that the applicant will become a public charge. * * * If, however, the family is reliant on the * * * benefits as its sole means of support, the * * * applicant may be considered to have received public cash assistance. This determination is to be made on a case-by-case basis and upon consideration of the totality of the applicant's circumstances.

Although this memorandum specifically addressed the receipt of cash assistance under the former Aid to Families with Dependent Children (AFDC) program, the rule is applicable generally to other cash benefit programs that may give rise to public charge determinations (See section 6.A below.) Accordingly, Service officers should not attribute cash benefits received by U.S. citizen or alien children or other family members to alien applicants for purposes of determining whether the applicant is likely to become a public charge, absent evidence that the family is reliant on the family member's benefits as its *sole* means of support.

6. Benefits That May and May Not Be Considered for Public Charge Purposes

The term ''public charge'' has not been defined in law or regulation and, in the past, the Service has not provided comprehensive guidance on all kinds of benefits that could cause an alien to be considered a public charge. In light of the new laws and the complexity of the federal, state, and local public benefits system, this issue now requires that the Service adopt uniform standards. Accordingly, the Service is publishing a proposed rule for notice and comment, as noted above. The proposed standards take into account the law and public policy decisions concerning alien eligibility for public benefits and public health considerations, as well as past practice by the Service and the Department of State.

It has never been Service policy that *any* receipt of services or benefits paid for in whole or in part from public funds renders an alien a public charge, or indicates that the alien is likely to become a public charge. The nature of the public program must be considered. For instance, attending public schools, taking advantage of school lunch or other supplemental nutrition programs, or receiving emergency medical care would not make an alien inadmissible as a public charge, despite the use of public funds. While the Service has not previously issued guidance on a program-by-program basis, the Department of State did codify its policy in the Foreign Affairs Manual (FAM), excluding Food Stamps from consideration for public charge purposes because of its ''supplemental'' nature.[15] The Service is now taking a similar approach by adopting a definition of public charge that focuses on whether the alien is or is likely to become primarily dependent on the government for subsistence. After extensive consultation with benefit-granting agencies, the Service has determined that the best evidence of whether an alien is primarily dependent on the government for subsistence is either (i) the receipt of public cash assistance for income maintenance, or (ii) institutionalization for long-term care at government expense.

The Service is proposing this definition by regulation and adopting it on an interim basis for several reasons. First, confusion about the relationship between the receipt of public benefits and the concept of ''public charge'' has deterred eligible aliens and their families, including U.S. citizen children, from seeking important health and nutrition benefits that they are legally entitled to receive. This reluctance to access benefits has an adverse impact not just on the potential recipients, but on public health and the general welfare. Second, non-cash benefits (other than institutionalization for long-term care) are by their nature supplemental and do not, alone or in combination, provide sufficient resources to support an individual or family. In addition to receiving non-cash benefits, an alien would have to have either additional income—such as wages, savings, or earned retirement benefits—or public cash assistance. Thus, by focusing on cash assistance for income maintenance, the Service can identify those who are primarily dependent on the government for subsistence without inhibiting access to non-cash benefits that serve important public interests. Finally, certain federal, state, and local benefits are increasingly being made available to families with incomes far above the poverty level, reflecting broad public policy decisions about improving general public health and nutrition, promoting education, and assisting working-poor families in the process of becoming self-sufficient. Thus, participation in such non-cash programs is not evidence of poverty or dependence.

In adopting this new definition, the Service does not expect to substantially change the number of aliens who will be found deportable or inadmissible as public charges. First, under the stricter eligibility rules of the welfare reform laws, many legal aliens are no longer eligible to receive certain types of public benefits, so they run no risk of becoming public charges by virtue of receiving such benefits. Many of those who remain eligible for federal, state, and local public benefits are LPRs, refugees, and asylees, who are unlikely to face public charges screening in any case in light of the section 101(a)(13)C) and the statutory exceptions.[16] Further, in light of the *Matter of B* test, deportations on public charge grounds have been rare and are expected to remain so. With respect to admissibility, the new AOS has already raised the threshold for many families to demonstrate that a sponsored alien is not likely to become a public charge. In addition, the statutory factors under section 212(a)(4)(B) continue to apply. This, while the Service will not take an alien's past or current receipt of non-cash benefits such as medical assistance into account for public charge purposes, the alien's age, health, and resources *must* be considered (along with the other statutory factors) in determining whether he or she is likely to become primarily dependent on the government for subsistence in the future.

The rules governing alien eligibility for federal, state, and local public benefits are complex and subject to change, including significant state-by-state variations. INS officers are not expected to know the substantive eligibility rules for different public benefit programs. Rather, this guidance and the proposed rule are intended to make public charge determinations simpler and more uniform, while simultaneously providing greater predictability to the public.

A. Benefits That May Be Considered for Public Charge Purposes

Cash assistance for income maintenance and institutionalization for long-term care at government expense may be considered for public charge purposes. Programs that provide such benefits include:

1. Supplemental Security Income (SSI) under Title XVI of Social Security Act;
2. Temporary Assistance for Needy Families (TANF) cash assistance (part A of Title IV of the Social Security Act—the successor to the AFDC program);[17]
3. State and local cash assistance programs that provide benefits for income maintenance (often called ''General Assistance'' programs); and
4. Programs (including Medicaid) supporting aliens who are institutionalized for long-term care *e.g.*, in a nursing home or mental health institution).[18]

Past or current receipt of such cash benefits does not lead to a *per se* determination that an alien is either inadmissible or deportable as a public charge. Rather, such benefits should be taken into account under the totality of the circumstances test for purposes of admission/adjustment and should be considered for deportation purposes under the standards of section 237(a)(5) and *Matter of B.*

Note that not all cash assistance is provided for purposes of income maintenance, and thus not all cash assistance is relevant for public charge purposes. For example, some energy assistance programs provide supplemental benefits through cash payments, in addition to vouchers or in-kind benefits, depending on the locality and the

[14] See *Perales* v. *Reno,* 48 F.3d 1305 (2d Cir. 1995).

[15] 9 FAM § 40.41 n.9.1

[16] See section 4, above, for a discussion of public charge exceptions.

[17] States have flexibility in administering the TANF program and may choose to provide non-cash assistance such as subsidized child care or transportation vouchers in addition to cash assistance. Such non-cash benefits should not be considered for public charge purposes. States may also provide non-recurrent cash payments for specific crisis situations under TANF. Such payments should not be considered for public charge purposes since they are not cash for income maintenance.

[18] Costs for imprisonments for conviction of a crime are not a basis for a public charge determination.

type of fuel needed. Likewise, cash payments could also be provided for child care assistance. Such supplemental, special-purpose cash benefits should not be considered in public charge determinations because they are not evidence of primary dependence on the government for subsistence.

B. Benefits That May Not Be Considered for Public Charge Purposes

Non-cash benefits (other than institutionalization for long-term care) should not be taken into account in making public charge determinations, nor should special-purpose cash assistance that is not intended for income maintenance. Therefore, past, current, or future receipt of these benefits should not be considered in deterining whether an alien is or is likely to become a public charge. Further, an alien need not repay benefits already received or withdraw form a benefit program in order to be eligible for admission or adjustment of status.

It is not possible to list all the supplemental non-cash benefits or special-purpose cash benefits that an alien may receive that should *not* be considered for public charge purposes, but common examples include:

1. Medicaid and other health insurance and health services (including public assistance for immunizations and for testing and treatment of symptoms of communicable diseases; use of health clinics, short-term rehabilitation services, and emergency medical services) other than support for long-term institutional care,[19]
2. Children's Health Insurance Program (CHIP);
3. Nutrition programs, including Food Stamps, the Special Supplemental Nutrition Program for Women, Infants and Children (WIC), the National School Lunch and School Breakfast Program, and other supplementary and emergency food assistance programs;
4. Housing benefits;
5. Child care services;
6. Energy assistance, such as the Low Income Home Energy Assistance Program (LIHEAP);
7. Emergency disaster relief;
8. Foster care and adoption assistance;
9. Educational assistance, including benefits under the Head Start Act and aid for elementary, secondary, or higher education;
10. Job training programs; and
11. In-kind, community-based programs, services, or assistance (such as soup kitchens, crisis counseling and intervention, and short-term shelter).

State and local programs that are similar to the federal programs listed above should also be excluded from consideration for public charge purposes. Note that states may adopt different names for the same or similar publicly funded programs. In California, for example, Medicaid is called ''Medi-Cal'' and CHIP is called ''Healthy Families.'' It is the underlying nature of the program, not the name adopted in a particular state, that determines whether or not it should be considered for public charge purposes.

In addition, and consistent with existing Service practice, cash payments that have been earned, such as Title II Social Security benefits, government pensions, and veterans' benefits, among other forms of earned benefits, do not support a public charge determination.

7. Affidavit of Support

The new AOS form, Form I–864, asks whether the sponsor or a member of the sponsor's household has received means-tested benefits within the past 3 years. The purpose of this question is *not* to determine whether the sponsor is or is likely to become a public charge, but to ensure that the adjudicating officer has access to all facts that may be relevant in determining whether the 125-percent annual income test is met. Any cash benefits received by the sponsor cannot be counted toward meeting the 125-percent income threshold, but receipt of other means-tested benefits, such as Medicaid, is not disqualifying for sponsorship purposes. As noted above, public benefit programs are increasingly available to families with incomes above 125 percent of the poverty line.

The regulations implementing the new AOS requirement are found at 8 CFR part 213a. Separate guidance has been issued on adjudicating applications including an AOS.

Continued Use of Form I–134

The use of the *new* AOS (Form I–864) is mandatory for those categories of immigrants listed in section 212(a)(4)(C) and (D), and a Service officer *may not* accept a Form I–134 in place of the new AOS for these immigrants if the application was filed on or after December 19, 1997. In those cases not governed by sections 212(a)(4)(C) and (D) and 213A (*e.g.*, parolees, nonimmigrants, or diversity immigrants) in which the Service has traditionally accepted Form I–134, Service officers may continue to do so on a discretionary basis. Use of Form I–361 will continue in cases involving Amerasians under Public Law 97–361.

8. Naturalization

There is no public charge test for purposes of naturalization. There are two narrow circumstances under which the public charge issue can arise in a naturalization case. First, the alien's admission for permanent residence may not have been ''lawful'' pursuant to section 318 because, *at the time of admission or adjustment,* the alien was subject to exclusion as an alien likely to become a public charge. This would generally occur only if the Service can show that the alien withheld or misrepresented material facts relating to the public charge issue at the time of admission or adjustment. Secondly, the alien's initial admission may have been lawful, but later the alien became deportable as a public charge, under the test described in section 3, above. This would not be a bar to naturalization unless the Service actually instituted deportation proceedings against the alien. As a practical matter, neither of these situations is likely to occur.

The Service has no authority to make the repayment of public assistance a condition for granting naturalization, and officers should not request proof of repayment from applicants in connection with a naturalization adjudication.

9. Public Charge Bonds

Section 213 of the INA, Admission of Certain Aliens on Giving Bond, was amended by IIRIRA only by including a parenthetical reference to the new AOS prescribed in INA section 213A. Where appropriate, officers may use the public charge bond option pursuant to section 213 as has been done in the past.

10. Points of Contact

Questions concerning this memorandum should be referred to Sophia Cox or Kevin Cummings, Headquarters Office of Adjudications, at 202–514–4754, through appropriate channels.

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BILLING CODE 4410–10–M

[19] The Service's decision not to consider Medicaid, CHIP, and Food Stamps for public charge purposes does not affect the authority of benefit granting agencies to seek repayment for benefits received by an alien from the alien's sponsor under the new AOS.

Federal Register

Wednesday
May 26, 1999

Part V

Environmental Protection Agency

40 CFR Part 68

Accidental Release Prevention Requirements: Risk Management Programs Under Clean Air Act Section 112(r)(7); Amendments to the Worst-Case Release Scenario Analysis for Flammable Substances; Final and Proposed Rules

Proposed Settlement; Clean Air Act 112(r) Accidental Release Prevention Requirements: Risk Management Programs Litigation; Notice

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 68

[FRL–6348–2]

Accidental Release Prevention Requirements: Risk Management Programs Under Clean Air Act Section 112(r)(7); Amendments to the Worst-Case Release Scenario Analysis for Flammable Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This direct final action amends the Chemical Accident Prevention Provisions, also known as the Risk Management Program (RMP) regulations, codified in 40 CFR part 68. The revisions concern the worst-case release scenario analysis for regulated flammable substances in 40 CFR 68.25. EPA is issuing these revisions so that the regulated community can treat regulated flammable substances in the same manner as regulated toxic substances for determining the quantity released when conducting a worst-case release scenario analysis. EPA is taking this direct final action pursuant to a settlement agreement with the American Petroleum Institute (API).

EPA is also clarifying its interpretation of Clean Air Act sections 112(l) and 112(r)(11), as they relate to Department of Transportation (DOT) requirements under the Federal Hazardous Materials Transportation Law under a settlement agreement with the Chlorine Institute (CI).

DATES: This rule is effective on June 21, 1999 without further notice, unless EPA receives adverse comment by June 16, 1999 or, pursuant to CAA section 113(g), declines to finalize the settlement agreement. If we receive such comment, or decide to withdraw from the settlement agreement, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Docket and Comments. Docket No. A–99–15, containing supporting information used to develop these amendments, is available for public inspection and copying from 8:00 a.m. to 5:30 p.m., Monday through Friday (except government holidays) from EPA's Air Docket, at Waterside Mall, Room M1500, 401 M Street, SW, Washington, D.C., 20460, telephone 202–260–7548. Written comments should be submitted to the same address. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Sicy Jacob or John Ferris, Chemical Emergency Preparedness and Prevention Office, Environmental Protection Agency (5104), 401 M Street SW, Washington, D.C., 20460, (202) 260–7249 or (202) 260–4043, respectively; or the Emergency Planning and Community Right-to-Know Hotline at 800–424–9346 (in the Washington, DC metropolitan area, (703) 412–9810). You may wish to visit the Chemical Emergency Preparedness and Prevention Office (CEPPO) Internet site, at www.epa.gov/ceppo.

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially regulated by this action are those stationary sources that have more than a threshold quantity of a regulated substance in a process. Regulated categories and entities include:

Category	Example of regulated entities
Petrochemical	Refineries, Plastics, Resins.
Chemical Manufacturing.	Organics.

This table is not meant to be exhaustive, but rather provides a guide for readers to indicate some of those entities likely to be regulated by this action. The table lists entities EPA is aware of that could potentially be regulated by this action. Other entities not listed in the table could also be regulated. To determine whether a stationary source is regulated by this action, carefully examine the provisions associated with the list of substances and thresholds under § 68.130 and the applicability criteria under § 68.10. If you have questions regarding applicability of this action to a particular entity, consult the hotline or persons listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Table of Contents

I. Introduction and Background

A. Statutory Authority

These amendments are being promulgated under sections 112(r) and 301(a)(1) of the Clean Air Act (CAA) as amended (42 U.S.C. 7412(r), 7601(a)(1)).

B. Background

The 1990 CAA Amendments added section 112(r) to provide for the prevention and mitigation of accidental chemical releases. Section 112(r) mandates that EPA promulgate a list of ''regulated substances,'' with ''threshold quantities''. Processes at stationary sources that contain a threshold quantity of a regulated substance are subject to accidental release prevention regulations promulgated under CAA section 112(r)(7). EPA promulgated the list of regulated substances on January 31, 1994 (59 FR 4478) (the ''List Rule'') and the accidental release prevention regulations creating the risk management program requirements on June 20, 1996 (61 FR 31668) (the ''RMP Rule''). Together, these two rules are codified at 40 CFR part 68. EPA has since revised the rules in several respects, and these revisions are reflected in the most recent codification of 40 CFR part 68.

Part 68 requires that any source with more than a threshold quantity of a regulated substance in a process develop and implement a risk management program that includes a five-year accident history, offsite consequence analyses, a prevention program, and an emergency response program. In part 68, processes are divided into three categories (Programs 1 through 3). Processes that likely have no potential impact on the public in the case of accidental releases have minimal requirements (Program 1). Processes in Programs 2 and 3 have additional requirements based on their potential for offsite consequences as indicated by worst-case accidental release analysis and their accident history. Program 3 is also triggered if the processes are subject to OSHA's Process Safety Management (PSM) Standard. By June 21, 1999, any source with more than a threshold quantity of a regulated substance in a process must submit to EPA a risk management plan (RMP) that summarizes their implementation of the risk management program.

C. RMP Rule Litigation

The American Petroleum Institute (API) and the Chlorine Institute (CI) filed petitions for judicial review of the

RMP Rule (The Chlorine Institute v. EPA, No. 94–1279 (D.C. Cir.) and consolidated cases (Nos. 96–1284, 96–1288, 96–1289 & 96–1290)). In court filings, API raised issues related to worst-case release scenario analysis (§ 68.25 of the rule) for flammables.

In the final RMP rule issued on June 20, 1996, § 68.25(e) states that when conducting a worst-case scenario analysis for flammables, the owner or operator shall assume that the quantity of the substance, as determined under paragraph (b) of § 68.25, vaporizes, resulting in a vapor cloud explosion. This approach applies to all listed flammable substances regardless of whether the flammable substance is normally a liquid or liquefied by refrigeration. API suggested that flammable liquids and those liquefied by refrigeration should be treated, for modeling purposes, in the same manner as for toxic liquids or those liquefied by refrigeration, as stated in § 68.25 (c) and (d). EPA agreed that flammable liquids (including those liquified by refrigeration) could be appropriately treated in that manner. Accordingly, EPA and API signed a proposed settlement agreement in May 1999. This settlement agreement is awaiting finalization pursuant to section 113(g) of the CAA.

CI's primary litigation concern related to CAA sections 112(l) and 112(r)(11), as they relate to Department of Transportation (DOT) requirements under the Federal Hazardous Materials Transportation Law (''Federal Hazmat Law''). EPA and CI reached an agreement on this issue and signed a proposed settlement agreement in May 1999. This settlement agreement is awaiting finalization pursuant to section 113(g) of the CAA.

II. Discussion of Revisions to § 68.25

40 CFR 68.25 requires each stationary source subject to the RMP rule to analyze at least one worst-case release scenario for regulated flammables and at least one for regulated toxic substances that are present in a process at the stationary source above the threshold quantity. A worst-case release means the release of the largest quantity of a regulated substance from a vessel or process line failure that results in the greatest distance to an endpoint defined in § 68.22(a).

In the final rule promulgated on June 20, 1996, EPA established a framework for the worst-case scenario analysis that considers the physical state of the substance and the way in which it is stored or handled (see 40 CFR 68.25):

(1) For toxic gases and gases liquefied by pressure, the worst-case release scenario assumes that the largest quantity is released in 10 minutes and the rate of release to the air is the quantity divided by 10 minutes. Upon loss of containment (e.g. a catastrophic vessel failure), a gaseous substance will be completely released to the air within 10 minutes. Although gases liquefied by pressure will behave initially like a liquid, they will rapidly become gases upon catastrophic release because of the sudden release of pressure and because the storage temperature of the liquid is often much higher than the boiling point of the substance. The rate of flashing and volatilization is generally great enough to vaporize the entire quantity within 10 minutes.

(2) For toxic liquids, the worst-case scenario assumes an instantaneous spill; the release rate to the air is the volatilization rate from a pool that spreads out to a 1 centimeter (cm) depth unless passive mitigation (e.g., a diked area) contains the substance in a smaller area. The rate of volatilization to the air depends on the surface area of the liquid pool and it may be adjusted to account for the smaller surface in a contained area.

(3) For toxic substances liquefied by refrigeration, the scenario assumes an instantaneous liquid spill followed by volatilization of the pool at the substance's boiling point but only if the spilled liquid is contained by passive mitigation at a liquid depth greater than 1 cm. If passive mitigation is not present or is of such large capacity that the refrigerated liquid spill can spread out to a depth of 1 cm, then the quantity of refrigerated liquid is assumed to completely volatilize within 10 minutes. Gases liquefied by refrigeration need time to vaporize and become a gas because the storage temperature of the liquid is less than its boiling point. Therefore, the rate of release to the air is less than the total quantity released in 10 minutes. The liquid must be contained by passive mitigation at a depth greater than 1 cm; otherwise, the rate of warming and volatilization is great enough to completely vaporize the spill within 10 minutes.

For all listed flammables however, the worst case assumes that the quantity in the largest vessel or pipeline vaporizes to form a vapor cloud, followed by a vapor cloud explosion. No consideration was given for liquids or substances liquefied by refrigeration, primarily because EPA assumed that passive mitigation or containment was typically not used under flammable storage due to fire safety reasons. The American Petroleum Institute (API) argued that, in many cases, spilled flammable liquids are, in fact contained, but in a way that prevents a liquid fire from impacting storage vessels and prevents release to the environment. Such containment serves to reduce the quantity available for a vapor cloud explosion in the same way that liquid toxics generate a smaller toxic vapor cloud than gases. If the flammable worst-case scenario were revised to account for liquids in the same way as toxics, then the flammable worst-case scenario could distinguish flammable gases from liquids to avoid generating a technically incorrect and overly conservative result.

EPA agrees that the worst-case assessment for flammable liquids and flammables liquefied by refrigeration is not consistent with the approach for toxic liquids or toxics liquefied by refrigeration. EPA is thus taking direct final action to revise § 68.25(e) so that flammables may be treated in a manner consistent with the treatment of toxics.

Specifically, EPA is making the following changes to § 68.25 for flammables: (1) For regulated flammable substances that are normally gases at ambient temperature and handled as a gas or as a liquid under pressure, the owner or operator shall assume that the quantity in the vessel or pipe, as determined under § 68.25(b), is released as a gas over 10 minutes. The total quantity shall be assumed to be involved in the vapor cloud explosion. (2) For regulated flammable substances that are normally liquids at ambient temperature, the owner or operator shall assume that the entire quantity in the vessel or pipe, as determined under § 68.25(b), is spilled instantaneously to form a liquid pool. For liquids at temperatures below their atmospheric boiling point, the volatilization rate shall be calculated at the conditions specified in § 68.25(d). The owner or operator shall assume that the quantity which becomes vapor in the first 10 minutes is reported as the quantity released. (3) For flammable gases handled as refrigerated liquids at ambient pressure, the owner or operator may assume that the total quantity of the substance determined in § 68.25(b) instantaneously spills followed by volatilization of the liquid pool at the substance's boiling point and under the conditions specified in § 68.25(d), provided the spilled liquid would be contained by passive mitigation at a liquid depth greater than 1 cm. The quantity of substance that becomes vapor in the first 10 minutes is involved in the vapor cloud explosion. If passive mitigation is not present or is of such large capacity that the refrigerated liquid spill can spread out to a depth of 1 cm, then the quantity of refrigerated

liquid is assumed to completely volatilize within 10 minutes and the total quantity is involved in the vapor cloud explosion.

This modification allows stationary sources to account for volatilization of the liquid pool if flammables are liquefied by refrigeration; however, sources are not required to use this added assumption. Sources can still use the quantity determined under § 68.25(b) as the quantity released. Sources that have already submitted their RMP may choose to use this revised approach, but are not required to do so. Sources that choose to use this revised approach, must revise and re-submit their RMP to EPA by June 21, 1999.

EPA will not be modifying RMP*Submit™ (the computer database used to report the RMPs) as a result of this rule at this time. Instead, stationary sources reporting for flammables liquefied by refrigeration would need to calculate the total quantity of the gas generated (taking the volatilization rate into account) from the pool in a 10-minute period. This value would be reported as ''Quantity released'' in section 4.4 of RMP*Submit™. The passive mitigation (dikes, berms, etc.) considered would be specified at ''Other'' in section 4.10. EPA also suggests that stationary sources utilize the Executive Summary section of RMP*Submit™ to explain how they calculated the quantity released for the refrigerated flammable substances.

Section 68.25(e) will be revised by adding (i) and (ii) and adding a new (f); existing (f), (g), and (h) will become (g), (h), and (i).

EPA is publishing this rule without prior proposal because we view this as consistent with the original rule as promulgated and as a noncontroversial amendment. No adverse comment is anticipated. The sole regulatory change contemplated under the settlement agreement represents a narrow technical amendment designed to make the treatment of flammables consistent with that of toxics. This amendment merely adjusts the way in which releases of these substances are modeled and does not alter the number of sources subject to RMP or the basic obligations under the RMP. In light of the foregoing and the need to promulgate the revision prior to the rule's June 21, 1999 compliance date, the Agency believes a direct final rule is the most appropriate vehicle for implementation of the settlement agreement.

In the ''Proposed Rules'' section of today's **Federal Register** publication, we are publishing a separate document that will serve as the proposal to revise § 68.25 for flammables if adverse comments are filed. This rule will be effective on June 21, 1999, without further notice unless we receive adverse comment by June 16, 1999. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

III. Clarification of CAA Sections 112(l) and 112(r)(11)

Pursuant to the settlement agreement with CI, EPA is clarifying its interpretation of CAA sections 112(l) and 112(r)(11), as they relate to DOT requirements under the Federal Hazardous Materials Transportation Law, 49 U.S.C. 5101–5127.

In our amendments to 40 CFR part 68 (63 FR 640, January 6, 1998) we dealt with the issue of the relationship between part 68 and statutes administered by and regulations promulgated by the Department of Transportation (DOT), such as the Federal Hazardous Materials Transportation Law (''Federal Hazmat Law'') and the Hazardous Materials Regulations (''HMR''). We noted therein that: ''EPA's regulations do not supersede or limit DOT's authorities and, therefore, are in compliance with CAA section 310.''

The definition of stationary source finalized in that rule generally provides that containers that are in transportation or storage incident to transportation are not part of a stationary source or a process at the stationary source. On the other hand, the definition of stationary source does provide that such containers are part of a stationary source under certain circumstances, most notably when they are being loaded, unloaded or on site for storage not incidental to transportation. Because a transportation container may at times function as a storage container or a process at a stationary source, or may function as part of operations at a stationary source, EPA is specifically directed by statute to address these activities (CAA section 112(r)(7)(B)(i)) (''The regulations shall cover storage, as well as operations''). To the extent that DOT is also authorized under the Federal Hazmat Law to regulate activities that are at a stationary source, nothing in the CAA prohibits both agencies from exercising concurrent jurisdiction over these activities. As EPA has said in the context of the RMP Rule, compliance with Federal Hazmat Law and HMR requirements may satisfy parallel requirements of part 68. This approach to implementation reflects the coordination between the agencies that is called for under CAA section 112(r)(7)(D). The exercise of concurrent jurisdiction preserves the applicability of the Federal Hazmat Law and HMR and does not supersede or limit DOT's jurisdiction. CAA section 310 provides that the CAA shall not be construed as superseding or limiting the authority or responsibilities of any Federal agency. Thus, neither CAA section 112(r)(11) (which provides that section 112(r) does not preempt state regulations that are more stringent than EPA's) nor section 112(l) (which allows EPA to delegate the accident prevention regulations to a state if the state's program is no less stringent than EPA's) can be read to authorize a state to regulate in a manner that would otherwise be preempted under the Federal Hazmat Law. A state that, for purposes of obtaining delegation under section 112(l), adopts Part 68 or a program that is substantively the same as Part 68 will not be considered by EPA to regulate in a manner that would otherwise be preempted under the Federal Hazmat Law.

IV. Judicial Review

Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of this rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of this notice, unless EPA withdraws this rule as described earlier in this notice. Under section 307(b)(2) of CAA, the requirements that are the subject of today's document may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

V. Administrative Requirements

A. Docket

The docket is an organized and complete file of all the information considered by the EPA in the development of this rulemaking. The docket is a dynamic file, because it allows members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulmaking process. Along with the proposed and promulgated rules and their preambles, the contents of the docket serve as the record in the case of judicial review. (See section 307(d)(7)(A) of the CAA.)

The official record for this rulemaking, as well as the public version, has been established for this

rulemaking under Docket No. A–99–15, and is available for inspection from 8:00 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays. The official rulemaking record is located at the address in **ADDRESSES** at the beginning of this document.

B. Executive Order 12866

Under Executive Order 12866, (58 Federal Register 51,735 (October 4, 1993)) the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order.

The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.''

It has been determined that today's action is not a ''significant regulatory action'' under the terms of E.O. 12866 and is, therefore, not subject to OMB review.

C. Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments.

If EPA complies 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, any written communications from the governments, and a statement supporting the need to issue the regulation.

In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's rule does not create a mandate on State, local or tribal governments. This rule change does not impose any enforceable duties on these entities. Instead, it merely provides an alternative approach for calculating the quantity released in the worst-case scenario. Stationary sources already subject to the rule may use this approach for conducting worst-case release scenarios for flammable substances in the same manner as toxic substances. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

D. 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 E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

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

E. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments.

If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This rule change merely provides an alternative approach for calculating the quantity released in the worst-case scenario. Stationary sources already subject to the rule may use this approach for conducting worst-case release scenarios for flammable substances in the same manner as toxic substances. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

F. Regulatory Flexibility

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this direct final rule and that this rule will not have a significant negative economic impact on small entities. This rule change does not require any stationary source to report additional elements in the risk management plan. It merely provides an alternative approach for stationary sources already subject to the rule to use for conducting worst-case release scenarios for flammable substances.

G. Paperwork Reduction

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this rule under the provisions of the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2050–0144.

This rule does not include any new information collection requirements for OMB review under the provisions of the Paperwork Reduction Act. This revision of the rule does not impose any new reporting, recordkeeping, or third party reporting requirements on stationary sources, it merely provides an alternative approach for sources to calculate the quantity released in the worst-case scenario for flammables. The Office of Management and Budget (OMB) has approved the information collection requirements contained in this rule under the provisions of the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2050–0144.

Burden means the total time, effort, or financial resources expended by persons

to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. EPA is amending the table in 40 CFR part 9 of currently approved ICR control numbers issued by OMB for various regulations to list the information requirements contained in this final rule.

H. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for state, local, and tribal governments, in the aggregate, or the private sector in any one year. Today's action is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Act.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for state, local, or tribal governments or the private sector. This rule change does not require any stationary sources to report additional elements in the risk management plan. It merely provides an alternative approach for stationary sources already subject to the rule to use for conducting worst-case release scenarios for flammable substances.

In addition, for the same reasons, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA requires EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 et. seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective on June 21, 1999.

List of Subjects in 40 CFR Part 68

Environmental protection, Chemicals, Chemical accident prevention.

Dated: May 17, 1999.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I, subchapter C, part 68 of the Code of Federal Regulations is amended to read as follows:

PART 68—CHEMICAL ACCIDENT PREVENTION PROVISIONS

1. The authority citation for Part 68 continues to read as follows:

Authority: 42 U.S.C. 7412(r), 7601(a)(1), 7661–7661f.

Subpart B—Hazard Assessment

2. Section 68.25 is amended by redesignating paragraphs (f), (g), and (h) as (g), (h), and (i), and by revising paragraph (e) and adding a new paragraph (f) to read as follows:

§ 68.25 Worst-case release scenario analysis.

* * * * *

(e) *Worst-case release scenario—flammable gases.* The owner or operator shall assume that the quantity of the substance, as determined under paragraph (b) of this section and the provisions below, vaporizes resulting in a vapor cloud explosion. A yield factor of 10 percent of the available energy released in the explosion shall be used to determine the distance to the explosion endpoint if the model used is based on TNT equivalent methods.

(1) For regulated flammable substances that are normally gases at ambient temperature and handled as a gas or as a liquid under pressure, the owner or operator shall assume that the quantity in the vessel or pipe, as determined under paragraph (b) of this section, is released as a gas over 10 minutes. The total quantity shall be

assumed to be involved in the vapor cloud explosion.

(2) For flammable gases handled as refrigerated liquids at ambient pressure:

(i) If the released substance is not contained by passive mitigation systems or if the contained pool would have a depth of one centimeter or less, the owner or operator shall assume that the total quantity of the substance is released as a gas in 10 minutes, and the total quantity will be involved in the vapor cloud explosion.

(ii) If the released substance is contained by passive mitigation systems in a pool with a depth greater than 1 centimeter, the owner or operator may assume that the quantity in the vessel or pipe, as determined under paragraph (b) of this section, is spilled instantaneously to form a liquid pool. The volatilization rate (release rate) shall be calculated at the boiling point of the substance and at the conditions specified in paragraph (d) of this section. The owner or operator shall assume that the quantity which becomes vapor in the first 10 minutes is involved in the vapor cloud explosion.

(f) *Worst-case release scenario—flammable liquids.* The owner or operator shall assume that the quantity of the substance, as determined under paragraph (b) of this section and the provisions below, vaporizes resulting in a vapor cloud explosion. A yield factor of 10 percent of the available energy released in the explosion shall be used to determine the distance to the explosion endpoint if the model used is based on TNT equivalent methods.

(1) For regulated flammable substances that are normally liquids at ambient temperature, the owner or operator shall assume that the entire quantity in the vessel or pipe, as determined under paragraph (b) of this section, is spilled instantaneously to form a liquid pool. For liquids at temperatures below their atmospheric boiling point, the volatilization rate shall be calculated at the conditions specified in paragraph (d) of this section.

(2) The owner or operator shall assume that the quantity which becomes vapor in the first 10 minutes is involved in the vapor cloud explosion.

* * * * *

[FR Doc. 99–12936 Filed 5–24–99; 10:57 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 68

[FRL–6348–1]

Accidental Release Prevention Requirements: Risk Management Programs Under Clean Air Act Section 112(r)(7); Amendments to the Worst-Case Release Scenario Analysis for Flammable Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is planning to amend the Chemical Accident Prevention Provisions, codified in 40 CFR part 68. The revisions concern the worst-case release scenario analysis for regulated flammable substances, 40 CFR 68.25. These revisions would allow the regulated community to treat regulated flammable substances in the same manner as regulated toxic substances for determining the quantity released when conducting a worst-case release scenario.

Elsewhere in the Final Rule section of today's **Federal Register**, EPA is issuing these revisions as a direct final rule. EPA views this as a noncontroversial revision and anticipates no adverse comment. A detailed rationale for this revision is in the preamble to the direct final rule. If no relevant adverse comments are received in response to this proposed rule, no further action is needed on this notice. If EPA receives relevant adverse comments, EPA will withdraw the direct final rule and it will not take effect. EPA will address public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. This action implements a settlement agreement between EPA and the American Petroleum Institute.

As a result of a settlement agreement with the Chlorine Institute, EPA is clarifying its interpretation of Clean Air Act sections 112(l) and 112(r)(11), as they relate to Department of Transportation requirements under the Federal Hazardous Materials Transportation Law.

DATES: *Comments.* Comments on the regulations proposed by this action must be received by June 16, 1999, unless a hearing is requested by June 1, 1999. If a hearing is requested, written comments must be received by July 1, 1999.

ADDRESSES: *Comments.* All written comments must be identified with the appropriate docket number (Docket No. A–99–15) and must be submitted to EPA Air Docket, Waterside Mall, Room M1500, 401 M Street, SW, Washington, D.C., 20460, telephone 202–260–7548.

Public Hearing. Persons interested in presenting oral testimony or inquiring as to whether a hearing is to be held should notify the person(s) listed in **FOR FURTHER INFORMATION CONTACT** section.

Docket. Docket No. A–99–15, containing supporting information used to develop the proposal, is available for public inspection and copying from 8:00 a.m. to 5:30 p.m., Monday through Friday, excluding Federal holidays at EPA's Air Docket at the above address.

FOR FURTHER INFORMATION CONTACT: Sicy Jacob or John Ferris, Chemical Emergency Preparedness and Prevention Office, Environmental Protection Agency (5104), 401 M Street SW, Washington, D.C., 20460, (202) 260–7249 or (202) 260–4043, respectively; or the Emergency Planning and Community Right-to-Know Hotline at 800–424–9346 (in the Washington, DC metropolitan area, (703) 412–9810). You may wish to visit the Chemical Emergency Preparedness and Prevention Office (CEPPO) Internet site, at www.epa.gov/ceppo.

SUPPLEMENTARY INFORMATION: In this document, EPA is proposing amendments to the regulations in 40 CFR part 68 for the accident prevention provisions under Clean Air Act section 112 (r), specifically, § 68.25(e), worst-case scenario analysis for flammables. The rule revisions are presented and discussed in detail in a direct final rule published in the Final Rules section of this **Federal Register**.

The chemical accident prevention provisions, also known as the risk management program regulations (''RMP rule'') were promulgated on June 20, 1996 (61 FR 31668). Stationary sources subject to the RMP rule are required to submit a risk management plan on their hazard assessment including off-site consequences, accident history, the prevention program and the emergency response program, to EPA by June 21, 1999. Among other requirements, the RMP rule requires covered stationary sources to analyze at least one worst-case release scenario for regulated flammables and at least one for regulated toxic substances that are present in a process at the stationary source above the threshold quantity.

In the final rule issued on June 20, 1996, § 68.25(e) states that when conducting a worst-case scenario analysis for flammables, the owner or operator shall assume that the quantity of the substance, as determined under paragraph (b) of § 68.25, vaporizes, resulting in a vapor cloud explosion. This approach applies to all listed flammable substances regardless of whether the flammable substance is normally a liquid or liquefied by refrigeration. In litigation filed by the American Petroleum Institute (API), API suggested that flammable liquids and those liquified by refrigeration should be treated, for modeling purposes, in the same manner as for toxic liquids or those liquified by refrigeration, as stated in § 68.25 (c) and (d). EPA agreed that flammable liquids (including those liquified by refrigeration) could be appropriately treated in that manner. EPA is thus proposing these changes to § 68.25.

The proposed revisions would allow stationary sources to model releases of flammable substances in the same manner as toxics. EPA is seeking comment on these proposed revisions. EPA considers these revisions to be noncontroversial and anticipates no adverse comments. If EPA timely receives significant, adverse comments, EPA will publish a document in the **Federal Register** withdrawing the direct final rule. In that event, all public comments received will be treated as comments on this proposed rule and will be addressed in a subsequent final rulemaking document. EPA will not institute a second comment period on this document. Any parties interested in commenting on these revisions should do so at this time.

I. 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 it allows 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 rules and their preambles, the contents of the docket serve as the record in the case of judicial review. (See section 307(d)(7)(A) of the CAA.)

The official record for this rulemaking, as well as the public version, has been established for this rulemaking under Docket No. A–99–15, and is available for inspection from 8:00 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays. The official rulemaking record is located at the address in **ADDRESSES** at the beginning of this document.

B. Executive Order 12866

Under Executive Order 12866, (58 **Federal Register** 51,735 (October 4, 1993)) the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order.

The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.''

It has been determined that today's action is not a ''significant regulatory action'' under the terms of E.O. 12866 and is, therefore, not subject to OMB review.

C. Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments.

If EPA complies 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, any written communications from the governments, and a statement supporting the need to issue the regulation.

In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's rule does not create a mandate on State, local or tribal governments. This rule change does not impose any enforceable duties on these entities. Instead, it merely provides an alternative approach for calculating the quantity released in the worst-case scenario. Stationary sources already subject to the rule may use this approach for conducting worst-case release scenarios for flammable substances in the same manner as toxic substances. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

D. 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 E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

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

E. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments.

If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This rule change merely provides an alternative approach for calculating the quantity released in the worst-case scenario. Stationary sources already subject to the rule may use this approach for conducting worst-case release scenarios for flammable substances in the same manner as toxic substances. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

F. Regulatory Flexibility

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this proposed rule and that this rule will not have a significant negative economic impact on small entities. This rule change does not require any stationary source to report additional elements in the risk management plan. It merely provides an alternative approach for stationary sources already subject to the rule to use for conducting worst-case release scenarios for flammable substances. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

G. Paperwork Reduction

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this rule under the provisions of the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2050–0144.

This rule does not include any new information collection, requirements for OMB review under the provisions of the Paperwork Reduction Act. This revision of the rule does not impose any new reporting, recordkeeping, or third party reporting requirements on stationary sources, it merely provides an alternative approach for sources to calculate the quantity released in the worst-case scenario for flammables. The Office of Management and Budget (OMB) has approved the information collection requirements contained in this rule under the provisions of the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2050–0144.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop,

acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. EPA is amending the table in 40 CFR part 9 of currently approved ICR control numbers issued by OMB for various regulations to list the information requirements contained in this final rule.

H. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for state, local, and tribal governments, in the aggregate, or the private sector in any one year. Today's action is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Act.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for state, local, or tribal governments or the private sector. This rule change does not require any stationary sources to report additional elements in the risk management plan. It merely provides an alternative approach for stationary sources already subject to the rule to use for conducting worst-case release scenarios for flammable substances.

In addition, for the same reasons, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA requires EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

List of Subjects in 40 CFR Part 68

Environmental protection, Chemicals, Chemical accident prevention.

Dated: May 17, 1999.

Carol M. Browner,

Administrator.

[FR Doc. 99–12937 Filed 5–24–99; 10:57 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6347–9]

Proposed Settlement; Clean Air Act 112(r) Accidental Release Prevention Requirements: Risk Management Programs Litigation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended (''Act'' or ''CAA''), 42 U.S.C. 7413(g), notice is hereby given of a proposed settlement in *The Chlorine Institute* v. *EPA*, No. 96–1279 (D.D. Cir.) and consolidated cases (Nos. 96–1284, 96–1288, 96–1289 & 96–1290). These cases involve challenges to EPA's rule entitled ''Accidental Release Prevention Requirements: Risk Management Programs Under Clean Air Act § 112(r)(7),'' issued on June 20, 1996 at 61 FR 31668 (June 20, 1996).

Under the proposed settlement, the Environmental Protection Agency (''Agency'' or ''EPA'') would take a number of actions. The major action EPA would take would be to propose to amend its RMP regulations as they relate to the worst case release scenario for flammable substances that are normally gases at ambient temperature, but are handled as liquids due to refrigeration. Under the proposed amendment, when calculating the amount of such a substance, sources may assume and take into account any pooling of the liquefied substance into a ''passive mitigation'' system, where such pooling would occur at a depth greater than one centimeter. This change would make the treatment of refrigerated flammables consistent with the treatment of other liquefied substances under the rule. EPA would also publish language clarifying its understanding of CAA Sections 112(1) and 112(r)(11) as they relate to Department of Transportation requirements under the Hazardous Materials Transportation Act. Finally, EPA would also issue clarifying guidance on a number of issues raised by various parties. These issues are discussed in greater detail in the proposed settlement agreement and its attachments.

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement from persons who were not named as parties to the litigation in question. The Agency or the Department of Justice may withhold or withdraw consent to the proposed settlement if the comments disclose facts or circumstances that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Copies of the proposed settlement agreement, which include relevant attachments, are available from Samantha Hooks, Air And Radiation Law Office (2344), Office of General Counsel, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 260–3804. Written comments should be sent to Nancy Ketcham-Colwill, (MC 2344), Air and Radiation Law Office, Office of General Counsel, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 and must be submitted on or before June 16, 1999.

Dated: May 17, 1999.

Lisa K. Friedman,

Acting General Counsel.

[FR Doc. 99–12938 Filed 5–24–99; 10:57 am]

BILLING CODE 6560–50–M

Federal Register

Wednesday
May 26, 1999

Part VI

The President

Federal Register
Vol. 64, No. 101
Wednesday, May 26, 1999

Presidential Documents

Title 3—

The President

Proclamation 7199 of May 21, 1999

National Maritime Day, 1999

By the President of the United States of America

A Proclamation

The history of the United States has always been linked to the sea. For more than 2 centuries, American ships and crews have made enormous contributions to the strength of our economy, the security of our shores, and the success of our efforts to create a more peaceful, prosperous world.

Today's U.S. Merchant Marine is building on that rich maritime heritage. Our commercial ships and marine infrastructure—and the dedicated men and women who are part of our maritime industry and U.S. Merchant Marine—continue to meet the challenges and opportunities of a rapidly changing marketplace and the expanding globalization of trade. Our merchant fleet is a key component of our Nation's intermodal transportation system, carrying more than one billion tons of cargo between domestic ports and supporting our connection to overseas markets. The fleet helps facilitate our engagement in world affairs and helps protect U.S. national security interests.

Recognizing that a strong America requires a strong merchant marine, my Administration has worked closely with the Congress to promote the development and maintenance of a modern, efficient, well-balanced merchant fleet, capable of facilitating international commerce and meeting the military needs of our Armed Forces during times of conflict or national emergency. Through the Maritime Security Program and the Voluntary Intermodal Sealift Agreement, which implement the Maritime Security Act of 1996, we have forged new public-private partnerships to ensure that our country will maintain a modern commercial fleet owned and operated by U.S. citizens and crewed by well-trained, highly skilled American sailors. We have strengthened U.S. shipyards through the National Shipbuilding Initiative. We also have helped keep our shipbuilding industry competitive in the global marketplace by providing financing guarantees, granting tax deferrals, and making it easier to operate ships under the U.S. flag.

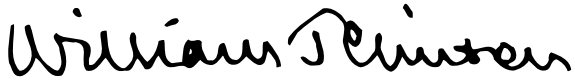
The United States Merchant Marine has served our Nation boldly and well through challenge and change. As we enter a new century, we must reaffirm our commitment to this proud legacy. We must maintain the strength and vitality of our merchant fleet and the skills and training of the men and women who have made America a great maritime Nation. By doing so, we will ensure that U.S.-flag vessels continue to sail the world's oceans, preserving our leadership of the global economy, strengthening our prosperity, and defending our freedom for generations to come.

In recognition of the importance of the U.S. Merchant Marine, the Congress, by a joint resolution approved May 20, 1933, has designated May 22 of each year as ''National Maritime Day'' and has authorized and requested the President to issue annually a proclamation calling for its appropriate observance.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim May 22, 1999, as National Maritime Day. I urge all Americans to observe this day with appropriate programs, ceremonies, and activities and by displaying the flag of the United States in

their homes and in their communities. I also request that all merchant ships sailing under the American flag dress ship on that day.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-first day of May, 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. 99–13594
Filed 5–25–99; 9:04 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7200 of May 22, 1999

Small Business Week, 1999

By the President of the United States of America

A Proclamation

From the Industrial Revolution to the Information Age, small businesses have powered the American economy and created much of our prosperity. Generations of entrepreneurs have found in small businesses an outlet for their creativity, the source of their livelihood, and a chance to share in the American Dream. Millions of American consumers have found in small businesses the innovative products and vital services they need to improve the quality of their lives.

Today, America's 24 million small businesses employ more than half our country's work force and generate more than $16 trillion in revenue—more than 50 percent of our gross domestic product. Small firms are also a true avenue of opportunity for women and minorities, for older and younger workers, and for part-time employees and those formerly on public assistance. They provide 67 percent of working Americans with their first job and their initial on-the-job training in basic work skills.

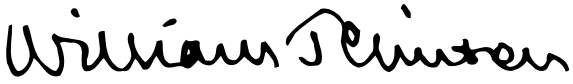
My Administration is deeply committed to creating an environment in which small businesses can thrive. Through programs administered by the Small Business Administration (SBA)—such as the business loan guarantee program, the economic development loan program, the microloan program, the small business investment company program, and the disaster loan and surety bond programs—we have given small business owners access to financial assistance. Last year alone, the SBA guaranteed almost $11 billion in loans to small businesses, provided technical and management assistance to almost a million people, and helped entrepreneurs compete for more than $33 billion in Federal contracts. Through tax relief and regulatory streamlining and by opening overseas markets and providing export assistance, we are helping America's small businesses compete successfully in the global marketplace.

The men and women who own and manage America's small businesses have made enormous contributions to the technological innovations, job growth, and prosperity we enjoy today. But those contributions cannot be measured in dollars and cents alone; entrepreneurs give back to their communities in myriad ways, making them better places in which to live and work. During Small Business Week, we have a special opportunity—and obligation—to acknowledge the achievements of small business men and women and to express our appreciation for the vision, energy, and effort they bring to their enterprises.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim May 23 through May 29, 1999, as Small Business Week. I call upon Government officials and all the people of the United States to observe this week with appropriate ceremonies, activities, and programs that celebrate the achievements of small business owners and encourage the development of new enterprises.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-second day of May, 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. 99–13595
Filed 5–25–99; 9:04 am]
Billing code 3195–01–P

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Federal Register

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CFR PARTS AFFECTED DURING MAY

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.

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT MAY 26, 1999

COMMERCE DEPARTMENT

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Whaling provisions; aboriginal subsistence whaling quotas and other limitations; published 5-26-99

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Acquisition regulations:

Contractor performance evaluations; published 4-26-99

Air quality implementation plans; approval and promulgation; various States:

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Georgia; published 4-26-99

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Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

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Clomazone; published 5-26-99

Spinosad; published 5-26-99

Tebuconazole; published 5-26-99

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Practice and procedure:

Filing procedures and authority delegations; published 4-26-99

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

GRAS or prior-sanctioned ingredients:

Cellulase enzyme preparation derived from trichoderma longibrachiatum; published 5-26-99

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Fish and Wildlife Service

Endangered and threatened species:

Johnson's seagrass; published 5-26-99

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

Permanent program and abandoned mine land reclamation plan submissions:

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Coast Guard

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Florida; published 4-26-99

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Michigan; published 2-25-99

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Federal Aviation Administration

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Eurocopter France; published 5-11-99

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Marine mammals—

Swim-with-the-dolphin interactive programs; comments due by 6-1-99; published 4-2-99

Exportation and importation of animals and animal products:

Horses, ruminants, and swine; semen, embryos, and products; alternative ports of entry—

Memphis, TN; comments due by 6-1-99; published 4-30-99

AGRICULTURE DEPARTMENT

Commodity Credit Corporation

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Wheat, feed grains, rice, and upland cotton; production flexibility contracts; comments due by 6-2-99; published 5-5-99

AGRICULTURE DEPARTMENT

Grain Inspection, Packers and Stockyards Administration

Packers and stockyards regulations:

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Atlantic tuna fisheries:

Bluefin tuna; comments due by 6-1-99; published 5-19-99

Fishery conservation and management:

Northeastern United States fisheries—

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CONSUMER PRODUCT SAFETY COMMISSION

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Carpets and rugs; surface flammability standard; comments due by 6-1-99; published 3-17-99

Children's sleepwear (Sizes 0-6X and 7-14); flammability standards; comments due by 6-1-99; published 3-17-99

Matresses and matress pads; flammability standards; comments due by 6-1-99; published 3-17-99

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HCFC production, import and export; allowance system; comments due by 6-4-99; published 4-5-99

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INTERIOR DEPARTMENT

Fish and Wildlife Service

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Rhadine exilis, etc. (nine invertebrate species from Bexar County, TX); comments due by 5-31-99; published 4-7-99

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Drug Enforcement Administration

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LIST OF PUBLIC LAWS

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H.R. 432/P.L. 106–29

To designate the North/South Center as the Dante B. Fascell North-South Center. (May 21, 1999; 113 Stat. 54)

H.R. 669/P.L. 106–30

To amend the Peace Corps Act to authorize appropriations for fiscal years 2000 through 2003 to carry out that Act, and for other purposes. (May 21, 1999; 113 Stat. 55)

H.R. 1141/P.L. 106–31

1999 Emergency Supplemental Appropriations Act (May 21, 1999; 113 Stat. 57)

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