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WASHINGTON, DC

WHEN: July 11, 2000, at 9:00 a.m.

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

RESERVATIONS: 202–523–4538

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

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 99–101–1]

Pine Shoot Beetle; Addition to Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the pine shoot beetle regulations by adding 28 counties in Illinois, Indiana, Michigan, New Hampshire, New York, Pennsylvania, Vermont, West Virginia, and Wisconsin to the list of quarantined areas. This action is necessary to prevent the spread of the pine shoot beetle, a pest of pine products, into noninfested areas of the United States.

DATES: This interim rule was effective June 13, 2000. We invite you to comment on this docket. We will consider all comments that we receive by August 18, 2000.

ADDRESSES: Please send your comment and three copies to: Docket No. 99–101–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 99–101–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register** and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Ms. Christine K. Markham, Regional Program Manager, PPQ, APHIS, 920 Main Campus Drive, Suite 200, Raleigh, NC 27606–5202, (919) 716–5582; or Ms. Coanne O'Hern, Operations Officer, Invasive Species and Pest Management, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236, (301) 734–8247.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR 301.64 (referred to below as the regulations) restrict the interstate movement of certain regulated articles from quarantined areas in order to prevent the spread of the pine shoot beetle (PSB) into noninfested areas of the United States.

PSB is a pest of pine trees. PSB can cause damage in weak and dying trees, where reproduction and immature stages of PSB occur. During ''maturation feeding,'' young beetles tunnel into the center of pine shoots (usually of the current years growth), causing stunted and distorted growth in host trees. PSB is also a vector of several diseases of pine trees. Adults can fly at least 1 kilometer, and infested trees and pine products are often transported long distances; these factors may result in the establishment of PSB populations far from the location of the original host tree. This pest damages urban ornamental trees and can cause economic losses to the timber, Christmas tree, and nursery industries.

PSB hosts include all pine species. The beetle has been found in a variety of pine species (*Pinus* spp.) in the United States. Scotch pine (*P. sylvestris*) is the preferred host of PSB. The Animal and Plant Health Inspection Service (APHIS) has determined, based on scientific data from European countries, that fir (*Abies* spp.), spruce (*Larix* spp.), and larch (*Picea* spp.) are not hosts of PSB.

Surveys recently conducted by State and Federal inspectors revealed 28 additional areas infested with PSB in 9 States (IL, IN, MI, NH, NY, PA, VT, WV, and WI). Copies of the surveys may be obtained by writing to either of the individuals listed under **FOR FURTHER INFORMATION CONTACT**.

The regulations in § 301.50–3 provide that the Administrator of APHIS will list as a quarantined area each State, or each portion of a State, in which PSB has been found by an inspector, in which the Administrator has reason to believe PSB is present, or that the Administrator considers necessary to regulate because of its inseparability for quarantine enforcement purposes from localities in which PSB has been found.

In accordance with these criteria, we are designating Woodford County, IL; Hamilton, Henry, Marion, Montgomery, and Rush Counties, IN; Arenac, Cheboygan, Iosco, and Roscommon Counties, MI; Coos County, NH; Broome, Chenango, Jefferson, Lewis, Madison, Oneida, and Tioga Counties, NY; Bedford, Bradford, Fayette, and Tioga Counties, PA; Essex and Orleans Counties, VT; Marshall and Tucker Counties, WV; and Green and Rock Counties, WI, as quarantined areas, and we are adding them to the list of quarantined areas provided in § 301.50–3(c).

Emergency Action

The Administrator of the Animal and Plant Health Inspection Service has determined that an emergency exists that warrants publication of this interim rule without prior opportunity for public comment. Immediate action is necessary to prevent PSB from spreading to noninfested areas of the United States.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make this action effective less than 30 days after publication. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget

has waived its review process required by Executive Order 12866.

We are amending the PSB regulations by adding 28 counties in Illinois, Indiana, Michigan, New Hampshire, New York, Pennsylvania, Vermont, West Virginia, and Wisconsin to the list of quarantined areas. This action is necessary to prevent the spread of PSB, a pest of pine products, into noninfested areas of the United States.

This emergency situation makes compliance with section 603 and timely compliance with section 604 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) impracticable. If we determine that this rule would have a significant economic impact on a substantial number of small entities, then we will discuss the issues raised by section 604 of the Regulatory Flexibility Act in our final regulatory flexibility analysis.

Executive Order 12372

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

Executive Order 12988

This interim rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this interim rule. The assessment provides a basis for the conclusion that the treatment of pine products from these 28 newly regulated counties will not present a risk of introducing or disseminating plant pests and will not have a significant impact on the quality of the human environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Paperwork Reduction Act

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

List of Subjects in 7 CFR Part 301

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

Accordingly, we are amending 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

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

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

2. Section 301.50–3, paragraph (c) is amended as follows:

a. By adding, in alphabetical order, entries for New Hampshire and Vermont to read as set forth below.

b. Under Illinois, Indiana, Michigan, New York, Pennsylvania, West Virginia, and Wisconsin, by adding new counties in alphabetical order to read as set forth below.

§ 301.50–3 Quarantined areas.

* * * * *

(c) * * *

ILLINOIS

* * * * *

Woodford County. The entire county.

INDIANA

* * * * *

Hamilton County. The entire county.

* * * * *

Henry County. The entire county.

* * * * *

Marion County. The entire county.

* * * * *

Montgomery County. The entire county.

* * * * *

Rush County. The entire county.

* * * * *

MICHIGAN

* * * * *

Arenac County. The entire county.

* * * * *

Cheboygan County. The entire county.

* * * * *

Iosco County. The entire county.

* * * * *

Roscommon County. The entire county.

* * * * *

NEW HAMPSHIRE

Coos County. The entire county.

NEW YORK

* * * * *

Broome County. The entire county.

* * * * *

Chenango County. The entire county.

* * * * *

Jefferson County. The entire county.

Lewis County. The entire county.

* * * * *

Madison County. The entire county.

* * * * *

Oneida County. The entire county.

* * * * *

Tioga County. The entire county.

* * * * *

PENNSYLVANIA

* * * * *

Bedford County. The entire county.

* * * * *

Bradford County. The entire county.

* * * * *

Fayette County. The entire county.

* * * * *

Tioga County. The entire county.

* * * * *

VERMONT

Essex County. The entire county.

Orleans County. The entire county.

WEST VIRGINIA

* * * * *

Marshall County. The entire county.

* * * * *

Tucker County. The entire county.

* * * * *

WISCONSIN

* * * * *

Green County. The entire county.

Rock County. The entire county.

* * * * *

Done in Washington, DC, this 13th day of June 2000.

Craig A. Reed,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–15323 Filed 6–16–00; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–182–AD; Amendment 39–11795; AD 2000–12–17]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes, that requires repetitive inspections to detect fatigue cracking of the pitch load fittings of the wing front spar, and rework, if necessary. This amendment also provides for optional terminating action for the repetitive inspections required by this AD. This amendment is prompted by a structural fatigue analysis that shows that the operational loads of the nacelle are higher than the loads used during initial design of the Model 767. The actions specified by this AD are intended to detect and correct fatigue cracking in the pitch load fittings of the wing front spar, which could result in reduced structural integrity of the strut.

DATES: Effective July 24, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 24, 2000.

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

FOR FURTHER INFORMATION CONTACT: James G. Rehrl, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2783; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 767 series airplanes was published in the **Federal Register** on December 6, 1999 (64 FR 68058). That action proposed to require repetitive inspections to detect fatigue cracking of the pitch load fittings of the wing front spar, and rework, if necessary.

Comments

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

Support for the Proposed Rule

One commenter supports the proposed rule.

Request To Allow Alternative Inspection Method

Two commenters request that the FAA revise paragraph (c)(1) of the proposed rule to allow a dye penetrant inspection to be performed in lieu of the high frequency eddy current (HFEC) inspection specified in that paragraph. Both commenters point out that Boeing Service Bulletin 767–57–0053, Revision 2, dated September 23, 1999, describes a dye penetrant inspection that may be used instead of the HFEC inspection. One of the commenters also points out that the original issue, dated June 27, 1996, and Revision 1, dated October 31, 1996, of the service bulletin reference a dye penetrant inspection but not an HFEC inspection, and some operators have already accomplished the inspection in accordance with one of the earlier issues of the service bulletin. (''Note 2'' of the proposed rule states that use of the original issue or Revision 1 of the service bulletin is acceptable for compliance with this AD.)

The FAA concurs with the commenters' request to revise paragraph (c)(1) of this AD. The FAA's intent in the proposed rule was to allow accomplishment of the dye penetrant inspection in lieu of the HFEC inspection; however, the proposed rule did not explicitly state that. Therefore, the FAA has revised paragraph (c)(1) of this final rule to require accomplishment of either an HFEC or a dye penetrant inspection.

Request to Reference Terminating Action

Several commenters request that the proposed rule be revised to specify a terminating action for the proposed repetitive inspections. Though Boeing Service Bulletin 767–57–0053, Revision 2, specifies that incorporation of certain strut improvement program (SIP) service bulletins is terminating action, the proposed rule does not mention a terminating action. One commenter, the airplane manufacturer, states that the proposed rule should be revised to state that accomplishment of the applicable SIP service bulletin, along with the bushing removal, lug bore inspections, and insurance cut specified in Boeing Service Bulletin 767–57–0053, constitutes terminating action for the repetitive inspection requirements of this AD. One commenter, an operator, also points out that the SIP service bulletin that is applicable to its airplanes recommends accomplishment of Boeing Service Bulletin 767–57–0053, Revision 1, dated October 31, 1996, prior to or concurrent with the SIP bulletin, but the SIP service bulletin does not list Boeing Service Bulletin 767–57–0053, Revision 2. The commenter states that the bulletins ''do not provide a clear direction on what needs to be accomplished to terminate the inspection requirements stated in the NPRM.''

The FAA concurs with the commenters' request. The SIP service bulletins referenced by the commenter and Boeing Service Bulletin 767–57–0053, Revision 2, do reference one another, and modification of the nacelle strut and wing structure as specified in the applicable SIP service bulletin does constitute terminating action for the repetitive inspections required by this AD, provided that the lug bore inspections and the insurance cut described in this AD are also accomplished. Therefore, a new paragraph (g) has been added to this final rule to provide this as an optional terminating action.

In addition, the FAA is considering separate rulemaking actions to mandate accomplishment of the SIP service bulletins, and Boeing Service Bulletin 767–57–0053, Revision 2 (as well as the earlier revisions of that service bulletin), will be specified as an integral part of the actions required to accomplish the SIP service bulletins. A new ''Note 4'' has been included in this final rule to clarify this.

Request To Specify Removal of Bushings

One commenter requests that paragraph (c) of the proposed rule be revised to specify that the pitch load fitting bushings must be removed to accomplish the inspection of the lug bores. The commenter points out that removal of both the upper link and pitch load fitting bushings is specified in Figure 1 of the service bulletin. The commenter states that the omission is an error in the proposed rule.

The FAA does not concur with the commenter's request to revise paragraph

(c) of the proposed rule. The FAA acknowledges that the pitch load fitting bushings must be removed prior to inspection of the lug bores. Though this was not explicitly stated in the proposed rule, the FAA finds that it is implied by the wording of paragraph (c), which reads, ''accomplish the requirements of paragraphs (c)(1) and (c)(2) of this AD in accordance with [the service bulletin.]'' The service bulletin states that the HFEC inspection, which is specified in paragraph (c)(1) of this AD, is to be accomplished ''as specified in Figure 3'' of the service bulletin. In turn, Figure 3 instructs operators to remove the bushings prior to accomplishment of the inspection. The FAA finds that to specify every action contained in the service bulletin would unnecessarily complicate this AD. Therefore, no change to the final rule is necessary in this regard.

Conclusion

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

Cost Impact

There are approximately 663 Model 767 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 312 airplanes of U.S. registry will be affected by this AD, that it will take approximately 10 work hours per airplane to accomplish the required inspections, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $187,200, or $600 per airplane, per inspection cycle.

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

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2000–12–17: Boeing: Amendment 39–11795. Docket 99–NM–182–AD.

Applicability: Model 767 series airplanes, line numbers 1 through 663 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (h) 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 fatigue cracks in the pitch load fittings of the wing front spar, which could result in reduced structural integrity of the strut, accomplish the following:

(a) Accomplish the requirements of either paragraph (b) or (c) of this AD at the later of the times specified in paragraphs (a)(1) and (a)(2) of this AD.

(1) Prior to the initial inspection threshold specified in Figure 1, Table 1.1 of Boeing Service Bulletin 767–57–0053, Revision 2, dated September 23, 1999.

(2) Within 3,000 flight cycles or 18 months after the effective date of this AD, whichever occurs first.

Note 2: Inspections and repairs accomplished prior to the effective date of this AD in accordance with Boeing Service Bulletin 767–57–0053, dated June 27, 1996; or Revision 1, dated October 31, 1996; are considered acceptable for compliance with the applicable action specified in this amendment.

Option 1: Ultrasonic and Eddy Current Inspections

(b) Perform ultrasonic and eddy current inspections to detect cracks of the pitch load fittings of the wing front spar, in accordance with Boeing Service Bulletin 767–57–0053, Revision 2, dated September 23, 1999.

(1) If no crack is detected, repeat the inspections thereafter at the interval specified in Table 1.2 of Figure 1 of the service bulletin.

(2) If any crack is detected, prior to further flight, remove the upper link and the pitch load fitting bushings, and accomplish both paragraphs (b)(2)(i) and (b)(2)(ii) of this AD.

(i) Perform a detailed visual inspection of the inner and outer face pad-up areas of the pitch load fittings to detect damage or corrosion and to determine if the pad-up areas are parallel, in accordance with the service bulletin. Except as provided by paragraph (f) of this AD, if any damage, corrosion, or non-parallelism is detected, prior to further flight, rework the inner or outer face of the pitch load fitting where damage or corrosion was detected, and make pad-up areas parallel, as applicable, in accordance with the service bulletin.

(ii) Accomplish paragraph (d) of this AD.

Note 3: For the purposes of this AD, a detailed visual inspection is defined as:

''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

Option 2: High Frequency Eddy Current and Detailed Visual Inspections

(c) Remove the upper link and accomplish the requirements of paragraphs (c)(1) and (c)(2) of this AD, in accordance with Boeing Service Bulletin 767–57–0053, Revision 2, dated September 23, 1999.

(1) Perform a high frequency eddy current inspection or a dye penetrant inspection to detect cracking of the pitch load fittings of the wing front spar.

(2) Perform a detailed visual inspection of the inner and outer face pad-up areas of the pitch load fittings to detect damage or corrosion and to determine if the pad-up areas are parallel. Except as provided by paragraph (f) of this AD, if any damage, corrosion, or non-parallelism is detected, prior to further flight, rework the inner or outer face of the pitch load fitting where damage or corrosion was detected, and make pad-up areas parallel, as applicable, in accordance with the service bulletin.

Rework

(d) For airplanes on which any cracking is detected during any inspection required by paragraph (b) of this AD, or on which the requirements of paragraph (c) of this AD have been accomplished: Prior to further flight, accomplish paragraph (d)(1) or (d)(2) of this AD, as applicable, in accordance with Boeing Service Bulletin 767–57–0053, Revision 2, dated September 23, 1999; and accomplish paragraph (e) of this AD.

(1) For airplanes inspected in accordance with paragraph (c) of this AD and on which no cracking was detected: Make an insurance cut of the pitch load fitting lug.

(2) For airplanes on which any cracking was detected during any inspection required by paragraph (b) or (c) of this AD: Except as provided by paragraph (f) of this AD, rework the lugs of the pitch load fittings of the wing front spar.

Bushing Installation

(e) For airplanes on which the requirements specified in paragraph (d) of this AD have been accomplished: Prior to further flight, install new bushings in the pitch load fittings of the wing front spar as specified in paragraph (e)(1) or (e)(2) of this AD, in accordance with Boeing Service Bulletin 767–57–0053, Revision 2, dated September 23, 1999.

(1) Option 1: Install new bushings using the high interference fit method, and repeat the inspections required by paragraph (b) or (c) of this AD at the intervals specified in Table 1.3 of Figure 1. of the service bulletin.

(2) Option 2: Install new bushings using the FORCEMATE method, and repeat the inspections required by paragraph (b) or (c) of this AD at the interval specified in Table 1.4 of Figure 1. of the service bulletin.

Repair

(f) If any damage is detected that is outside the limits specified in Boeing Service Bulletin 767–57–0053, Revision 2, dated September 23, 1999, and the service bulletin specifies to contact Boeing for appropriate action: Prior to further flight, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative (DER) who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved, as required by this paragraph, the approval letter must specifically reference this AD.

Optional Terminating Action

(g) Accomplishment of the actions specified in paragraphs (g)(1) and (g)(2) of this AD constitutes terminating action for the actions required by this AD.

(1) Modify the nacelle strut and wing structure in accordance with Boeing Service Bulletin 767–54–0080, dated October 7, 1999 (for Model 767 series airplanes powered by Pratt & Whitney engines); Boeing Service Bulletin 767–54–0081, dated July 29, 1999 (for Model 767 series airplanes powered by General Electric engines); or Boeing Service Bulletin 767–54–0082, dated October 28, 1999 (for Model 767 series airplanes powered by Rolls-Royce engines); as applicable.

(2) Accomplish the lug bore inspections and insurance cut of the pitch load fitting in accordance with Boeing Service Bulletin 767–57–0053, Revision 2, dated September 23, 1999.

Note 4: The FAA is considering separate rulemaking actions to mandate accomplishment of Boeing Service Bulletins 767–54–0080, 767–54–0081, and 767–54–0082. Actions described in Boeing Service Bulletin 767–57–0053, Revision 2 (or previous issues of that service bulletin), as required by this AD will be specified as an integral part of the actions required to accomplish these service bulletins.

Alternative Methods of Compliance

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

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(i) 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 airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(j) Except as provided in paragraphs (f) and (g)(1) of this AD, the actions shall be done in accordance with Boeing Service Bulletin 767–57–0053, Revision 2, dated September 23, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington, 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(k) This amendment becomes effective on July 24, 2000.

Issued in Renton, Washington, on June 9, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–15183 Filed 6–16–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–351–AD; Amendment 39–11791; AD 2000–12–13]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319, A320, and A321 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Airbus Model A319, A320, and A321 series airplanes, that currently requires revising the FAA-approved Airplane Flight Manual (AFM) to increase monitoring of the

flight path of the airplane to detect certain software anomalies of the flight management guidance system, and take appropriate corrective actions. This amendment adds a requirement to either modify the existing on-board replaceable modules of the flight management guidance computers (FMGC) to incorporate software changes, or replace the FMGC's with new, improved FMGC's; which would terminate the requirements for the AFM revision. This amendment is prompted by the issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent erroneous navigational calculations, which could result in an increased risk of collision with terrain or other airplanes.

DATES: Effective July 24, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 24, 2000.

The incorporation by reference of certain other publications, as listed in the regulations, was approved previously by the Director of the Federal Register as of November 3, 1997 (62 FR 53939, October 17, 1997).

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding 97–21–10, amendment 39–10163 (62 FR 53939, October 17, 1997), which is applicable to certain Airbus Model A319, A320, and A321 series airplanes, was published in the **Federal Register** on April 14, 2000 (65 FR 20105). The action proposed to continue to require a revision to the Airplane Flight Manual (AFM) to increase monitoring of the flight path of the airplane to detect certain software anomalies of the flight management guidance system, and take appropriate corrective actions. The action proposed to add a requirement to either modify all existing on-board replaceable modules of the FMGC's to incorporate software changes, or replace all existing FMGC's with new, improved FMGC's; which would terminate the requirements for the AFM revision. The action also proposed to limit the applicability of the existing AD to airplanes on which a certain modification has been installed or service bulletin has been accomplished, and to exclude airplanes on which another modification has been installed or service bulletin has been accomplished.

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

Support for the Proposal

One commenter, the manufacturer, concurs with the content of the proposal.

Later Revision of French Airworthiness Directive

The same commenter states that related French airworthiness directive 1999–411–140(B) has been revised to Revision 1, dated May 3, 2000, to include in the applicability Airbus Model A319 and A320 series airplanes having Airbus Modification 26717. The commenter notes that the proposed AD already includes these airplanes in its applicability, but suggests that the AD be revised to refer to the latest revision of the French airworthiness directive.

The FAA concurs that Revision 1 of the related French airworthiness directive matches the applicability of this AD and should be referenced for completeness. **Note 4** of the final rule has been revised to include a reference to Revision 1 of the French airworthiness directive.

Conclusion

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

Cost Impact

There are approximately 200 airplanes of U.S. registry that will be affected by this AD.

The actions that are currently required by AD 97–21–10 take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will be provided by the manufacturer at no charge to the operators. Based on these figures, the cost impact of the previously required actions on U.S. operators is estimated to be $60 per airplane.

The new actions that are required by this new AD will take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the new requirements of this AD on U.S. operators is estimated to be $12,000, or $60 per airplane.

The cost impact figures discussed above 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.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–10163 (62 FR 53939, October 17, 1997), and by adding a new airworthiness directive (AD), amendment 39–11791, to read as follows:

2000–12–13 Airbus Industrie: Amendment 39–11791. Docket 99–NM–351–AD. Supersedes AD 97–21–10, Amendment 39–10163.

Applicability: Model A319, A320, and A321 series airplanes; certificated in any category; on which any of the Airbus modifications has been installed or any of the Airbus service bulletins has been accomplished, as listed in the following table; except those airplanes on which Airbus Modification 26716, 26799, 26968, or 27831 has been installed; or except those airplanes on which Airbus Service Bulletin A320–22–1063, A320–22–1064, A320–22–1065, A320–22–1067, A320–22–1068, or A320–22–1069 has been accomplished:

Affected model(s)	Airbus modification installed
A319 and A321	25469 (reference Airbus Service Bulletin A320–22–1054).
A319, A320, and A321	26093.
A320	24065 (reference Airbus Service Bulletin A320–22–1040) or 24067 (reference Airbus Service Bulletin A320–22–1039).
A320	25314 (reference Airbus Service Bulletin A320–22–1051) or 25315 (reference Airbus Service Bulletin A320–22–1050).
A320 and A321	24064 (reference Airbus Service Bulletin A320–22–1034) or 24066 (reference Airbus Service Bulletin A320–22–1029).
A320 and A321	25199 (reference Airbus Service Bulletin A320–22–1045) or 25200 (reference Airbus Service Bulletin A320–22–1046).
A320 and A321	25240 (reference Airbus Service Bulletin A320–22–1033) or 25274 (reference Airbus Service Bulletin A320–22–1056).
A319, A320, and A321	26243.
A319 and A320	26717.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e)(1) 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 erroneous navigational calculations, which could result in an increased risk of collision with terrain or other airplanes, accomplish the following:

Restatement of Requirements of AD 97–21–10

(a) Within 10 days after November 3, 1997 (the effective date of AD 97–21–10, amendment 39–10163), revise the Normal Procedures Section of the FAA-approved Airplane Flight Manual (AFM) by inserting a copy of Model A319/320/321 Flight Manual Temporary Revision 4.03.00/02, dated May 28, 1997, into the AFM.

Note 2: When the temporary revision specified in paragraph (a) of this AD has been incorporated into the general revisions of the AFM, the general revisions may be inserted in the AFM, provided the information contained in the general revisions is identical to that specified in Model A319/320/321 Flight Manual Temporary Revision 4.03.00/02.

New Requirements of this AD

(b) Within 18 months after the effective date of this AD, accomplish either paragraph (b)(1) or (b)(2) of this AD, in accordance with Airbus Service Bulletin A320–22–1063, Revision 01, dated October 8, 1999; A320–22–1064, dated September 15, 1998; A320–22–1065, dated October 28, 1998; A320–22–1067, Revision 01, dated July 7, 1999; A320–22–1068, dated December 9, 1998; or A320–22–1069, dated February 1, 1999; as applicable. Following accomplishment of either paragraph (b)(1) or (b)(2) of this AD, the AFM revision required by paragraph (a) of this AD may be removed from the AFM.

(1) Modify all existing on-board replaceable modules of the flight management guidance computers (FMGC) to incorporate software changes in accordance with the Accomplishment Instructions of the applicable service bulletin.

(2) Replace all existing FMGC's with new, improved FMGC's in accordance with the Accomplishment Instructions of the applicable service bulletin.

(c) Accomplishment of either the modification or replacement action required by paragraph (b) of this AD constitutes terminating action for the AFM requirements of paragraph (a) of AD 98–19–08, amendment 39–10750. Following accomplishment of either of those actions, remove the FAA-approved AFM revision required by that AD (Airbus A319/320/321 Airplane Flight Manual Temporary Revision 9.99.99/44, Issue 2, dated March 3, 1998).

Spares

(d) As of the effective date of this AD, no person shall install any FMGC part number B546BAM0205, B546CAM0101, B546BCM0204, B398BAM0207, B398AAM0410, B546CCM0101, B546CCM0102, B546CCM0103, or B398BCM0107; unless it has been modified in accordance with this AD.

Alternative Methods of Compliance

(e)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

(2) Alternative methods of compliance, approved previously in accordance with AD 97–21–10, amendment 39–10163, are approved as alternative methods of compliance with paragraph (a) of this AD.

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

Special Flight Permits

(f) 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 airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(g) The actions shall be done in accordance with Model A319/320/321 Flight Manual Temporary Revision 4.03.00/02, dated May 28, 1997; Airbus Service Bulletin A320–22–1063, Revision 01, dated October 8, 1999; Airbus Service Bulletin A320–22–1064, dated September 15, 1998; Airbus Service Bulletin A320–22–1065, dated October 28, 1998; Airbus Service Bulletin A320–22–1067, Revision 01, dated July 7, 1999; Airbus

Service Bulletin A320–22–1068, dated December 9, 1998; and Airbus Service Bulletin A320–22–1069, dated February 1, 1999; as applicable.

(1) The incorporation by reference of Airbus Service Bulletin A320–22–1063, Revision 01, dated October 8, 1999; Airbus Service Bulletin A320–22–1064, dated September 15, 1998; Airbus Service Bulletin A320–22–1065, dated October 28, 1998; Airbus Service Bulletin A320–22–1067, Revision 01, dated July 7, 1999; Airbus Service Bulletin A320–22–1068, dated December 9, 1998; and Airbus Service Bulletin A320–22–1069, dated February 1, 1999; is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of Model A319/320/321 Flight Manual Temporary Revision 4.03.00/02, dated May 28, 1997, was approved previously by the Director of the Federal Register as of November 3, 1997 (62 FR 53939, October 17, 1997).

(3) Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in French airworthiness directive 1999–411–140(B), dated October 20, 1999, and Revision 1, dated May 3, 2000.

(h) This amendment becomes effective on July 24, 2000.

Issued in Renton, Washington, on June 9, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–15182 Filed 6–16–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–78–AD; Amendment 39–11794; AD 2000–12–16]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, that currently requires repetitive inspections to detect fatigue cracking or loose or missing fasteners of the aft torque bulkheads of the outboard nacelle struts; and repair, if necessary. This amendment expands the applicability of the existing AD to include certain additional airplanes, and removes certain other airplanes from the applicability of the existing AD. For all airplanes subject to this AD, this amendment also requires accomplishment of a new terminating action. This action is necessary to prevent fatigue cracking and loose or missing fasteners in the aft torque bulkheads of the outboard nacelle struts, which could result in failure of an outboard nacelle strut diagonal brace load path and possible separation of the nacelle from the wing. This action is intended to address the identified unsafe condition.

DATES: Effective July 5, 2000.

The incorporation by reference of Boeing Alert Service Bulletin 747–54A2184, Revision 1, dated May 6, 1999, as listed in the regulations, is approved by the Director of the **Federal Register** as of July 5, 2000.

The incorporation by reference of Boeing Alert Service Bulletin 747–54A2184, dated July 3, 1997, as listed in the regulations, was approved previously by the Director of the Federal Register as of March 18, 1999 (64 FR 10205, March 3, 1999).

Comments for inclusion in the Rules Docket must be received on or before August 18, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000-NM–78-AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: 9-anm-iarcomment@faa.gov. Comments sent via the Internet must contain ''Docket No. 2000–NM–78–AD'' in the subject line and need not be submitted in triplicate.

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

FOR FURTHER INFORMATION CONTACT: Tamara L. Anderson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2771; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: On February 22, 1999, the FAA issued AD 99–05–06, amendment 39–11054 (64 FR 10205, March 3, 1999), applicable to certain Boeing Model 747 series airplanes, to require repetitive inspections to detect fatigue cracking or loose or missing fasteners of the aft torque bulkheads of the outboard nacelle struts; and repair, if necessary. That action was prompted by a report indicating that cracking was found in the aft torque bulkheads of the outboard nacelle struts, and by the availability of new service instructions for detecting fatigue cracking that would not have been detected by the required actions of the existing AD. The requirements of that AD are intended to detect and correct such fatigue cracking and loose or missing fasteners, which could result in failure of an outboard nacelle strut diagonal brace load path and possible separation of the nacelle from the wing.

Explanation of Relevant Service Information

Since the issuance of AD 99–05–06, the FAA has reviewed and approved Boeing Alert Service Bulletin 747–54A2184, Revision 1, dated May 6, 1999. The alert service bulletin describes procedures for repetitive inspections to detect fatigue cracking or loose or missing fasteners of the aft torque bulkheads of the outboard nacelle struts; and repair, if necessary. These procedures are substantially similar to those described in Boeing Alert Service Bulletin 747–54A2184, dated July 3, 1997, which was referenced in AD 99–05–06 as an appropriate source of service information for accomplishment of certain requirements of that AD. However, Revision 1 of the alert service bulletin adds new airplanes (Group 5) that are subject to the repetitive inspections (and repair, if necessary) described in the original issue of the alert service bulletin and required by AD 99–05–06. For certain airplanes (*i.e.,* the airplanes listed in Groups 1, 2, and 5 of the alert service bulletin), the alert service bulletin also describes procedures for a terminating action that eliminates the need for the repetitive inspections described in the alert service bulletin for affected airplanes. The terminating action involves installation of doublers and fillers on the forward side of the lower spar fitting. Accomplishment of the actions specified in the alert service bulletin is

intended to adequately address the identified unsafe condition.

Explanation of Applicability of This AD

For airplanes listed in Groups 3 and 4 of the original issue of Boeing Alert Service Bulletin 747–54A2184, paragraph (c) of AD 99–05–06 describes a detailed visual inspection to detect fatigue cracking and loose or missing fasteners of the aft torque bulkheads of the number 1 and number 4 nacelle struts. For these airplanes in Groups 3 and 4, paragraph (d) of AD 99–05–06 states, ''Accomplishment of the nacelle strut modifications required in AD 95–13–07, amendment 39–9287 [60 FR 33336, June 28, 1995] * * * constitutes terminating action for the requirements of this AD.'' Paragraph (a) of AD 95–13–07 requires accomplishment of the nacelle strut modifications within 56 months after July 28, 1995 (the effective date of that AD). Considering that the compliance time for this modification has now passed, the FAA finds that it is unnecessary in this AD to continue to reference the inspection and terminating action for airplanes listed in Groups 3 and 4 of the alert service bulletin. Therefore, paragraphs (c) and (d) of AD 99–05–06 have not been included in this AD, and the applicability statement of this AD has been revised to include only airplanes listed in Groups 1, 2, and 5 of Revision 1 of the alert service bulletin.

Explanation of Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, this AD supersedes AD 99–05–06 to continue to require repetitive inspections to detect fatigue cracking or loose or missing fasteners of the aft torque bulkheads of the outboard nacelle struts; and repair, if necessary. This AD expands the applicability of the existing AD to include certain additional airplanes, and removes certain other airplanes from the applicability of the existing AD. For all airplanes subject to this AD, this amendment also requires accomplishment of a new terminating action. The actions are required to be accomplished in accordance with the alert service bulletin described previously, except as discussed below.

Differences Between Alert Service Bulletin and This AD

Operators should note that, although the alert service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, this AD requires the repair of those conditions to be accomplished in accordance with a method approved by the FAA, or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the FAA to make such findings.

In addition, the FAA has determined that there is an error in Item 3.A.5.c. under ''Part 4—Terminating Action'' in the Accomplishment Instructions of Boeing Alert Service Bulletin 747–54A2184, Revision 1. The words, ''as shown by Figure 11,'' should read ''as shown by Figure 12.'' ''Note 6'' has been included in this AD to clarify this error.

Cost Impact

None of the Model 747 series airplanes affected by this action are on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would take approximately 15 work hours to accomplish the required inspections, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of these inspections would be $900 per airplane.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would take approximately 45 work hours to accomplish the required terminating action, at an average labor rate of $60 per work hour. Required parts would cost approximately $8,166 per airplane. Based on these figures, the cost impact of the required terminating action on U.S. operators would be $10,866 per airplane.

Determination of Rule's Effective Date

Since this AD action does not affect any airplane that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, prior notice and public procedures hereon 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 and was not preceded by notice and opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (*e.g.,* reasons or data) for each request.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2000–NM–78–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44

FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–11054 (64 FR 10205, March 3, 1999), and by adding a new airworthiness directive (AD) amendment 39–11794, to read as follows:

2000–12–16 Boeing: Amendment 39–11794. Docket 2000–NM–78–AD. Supersedes AD 99–05–06, Amendment 39–11054.

Applicability: Model 747 series airplanes; as listed in Groups 1, 2, and 5 of Boeing Alert Service Bulletin 747–54A2184, Revision 1, dated May 6, 1999; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking and loose or missing fasteners in the aft torque bulkheads of the outboard nacelle struts, which could result in failure of an outboard nacelle strut diagonal brace load path and possible separation of the nacelle from the wing, accomplish the following:

Restatement of Requirements of AD 99–05–06

Repetitive Detailed Visual Inspections and Repair: Groups 1 and 2

(a) For airplanes identified as Groups 1 and 2 airplanes in Boeing Alert Service Bulletin 747–54A2184, dated July 3, 1997: Prior to the accumulation of 8,000 total flight cycles, or within 8,000 flight cycles since modification in accordance with AD 95–13–05, amendment 39–9285, or within 30 days after March 18, 1999 (the effective date of AD 99–05–06, amendment 39–11054), whichever occurs latest, perform a detailed visual inspection of the aft torque bulkheads of the number 1 and number 4 nacelle struts to detect fatigue cracking and loose or missing fasteners. The inspection shall be accomplished in accordance with Part I of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–54A2184, dated July 3, 1997, or Revision 1, dated May 6, 1999.

Note 2: There is a typographical error on Sheet 3 of Figure 1 of Boeing Alert Service Bulletin 747–54A2184, dated July 3, 1997. The words ''Group 1 airplanes'' should read ''Groups 1 and 2 airplanes.''

(1) If no cracking, and no loose or missing fastener, is found, repeat the inspection thereafter at the intervals specified in Figure 1 of the alert service bulletin.

(2) If any cracking, or any loose or missing fastener, is found, prior to further flight, repair in accordance with Part III of the alert service bulletin. Repeat the inspection thereafter at the intervals specified in Figure 1 of the alert service bulletin. Where the service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company designated engineering representative (DER) who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

Repetitive NDT Inspections and Repair: Groups 1 and 2

(b) For airplanes identified as Groups 1 and 2 airplanes in Boeing Alert Service Bulletin 747–54A2184, dated July 3, 1997: Prior to the accumulation of 8,000 total flight cycles, or within 8,000 flight cycles since modification in accordance with AD 95–13–05, amendment 39–9285, or within 30 days after March 18, 1999, whichever occurs latest, perform a non-destructive test (NDT) inspection of the aft torque bulkheads of the number 1 and number 4 nacelle struts to detect fatigue cracking. The NDT inspection shall be accomplished in accordance with Part II of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–54A2184, dated July 3, 1997, or Revision 1, dated May 6, 1999.

Note 3: The alert service bulletin refers to a variety of NDT inspections, consisting of ultrasonic inspections, surface eddy current inspections, and open-hole eddy current inspections. The logic diagram in Figure 1 of the alert service bulletin states the conditions under which each of these inspections is to be performed.

(1) If no cracking is found, repeat the inspection thereafter at the intervals specified in Figure 1 of the alert service bulletin.

(2) If any cracking is found, prior to further flight, repair in accordance with Part III of the alert service bulletin. Repeat the inspection thereafter at the intervals specified in Figure 1 of the alert service bulletin. Where the alert service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, repair in accordance with a method approved by the Manager, Seattle ACO; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company DER who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

New Requirements of This AD

Note 4: For the purposes of this AD, a detailed visual inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

Repetitive Detailed Visual Inspections and Repair: Group 5

(c) For airplanes identified as Group 5 of Boeing Alert Service Bulletin 747–54A2184, Revision 1, dated May 6, 1999: Prior to the accumulation of 8,000 total flight cycles, or within 90 days after the effective date of this AD, whichever occurs later, perform a detailed visual inspection of the aft torque bulkheads of the number 1 and number 4 nacelle struts to detect fatigue cracking and loose or missing fasteners. The inspection shall be accomplished in accordance with Part I of the Accomplishment Instructions of the alert service bulletin.

(1) If no cracking, and no loose or missing fastener, is found, repeat the inspection thereafter at the intervals specified in Figure 1 of the alert service bulletin.

(2) If any cracking, or any loose or missing fastener, is found, prior to further flight, repair in accordance with Part III of the alert service bulletin. Repeat the inspection thereafter at the intervals specified in Figure 1 of the alert service bulletin. Where the service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions,

repair in accordance with a method approved by the Manager, Seattle ACO, FAA, Transport Airplane Directorate; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company DER who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

Repetitive NDT Inspections and Repair: Group 5

(d) For airplanes identified as Group 5 airplanes in Boeing Alert Service Bulletin 747–54A2184, Revision 1, dated May 6, 1999: Prior to the accumulation of 8,000 total flight cycles, or within 90 days after the effective date of this AD, whichever occurs later, perform an NDT inspection of the aft torque bulkheads of the number 1 and number 4 nacelle struts to detect fatigue cracking. The NDT inspection shall be accomplished in accordance with Part II of the Accomplishment Instructions of the alert service bulletin.

Note 5: The alert service bulletin refers to a variety of NDT inspections, consisting of ultrasonic inspections, surface eddy current inspections, and open-hole eddy current inspections. The logic diagram in Figure 1 of the alert service bulletin states the conditions under which each of these inspections is to be performed.

(1) If no cracking is found, repeat the inspection thereafter at the intervals specified in Figure 1 of the alert service bulletin.

(2) If any cracking is found, prior to further flight, repair in accordance with Part III of the alert service bulletin. Repeat the inspection thereafter at the intervals specified in Figure 1 of the alert service bulletin. Where the alert service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, repair in accordance with a method approved by the Manager, Seattle ACO; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company DER who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

Terminating Action: Groups 1, 2, and 5

(e) For airplanes identified as Group 1, 2, and 5 airplanes in Boeing Alert Service Bulletin 747–54A2184, Revision 1, dated May 6, 1999: At the time specified in paragraph (e)(1), (e)(2), or (e)(3), as applicable, accomplish the terminating action (installation of doublers and fillers on the forward side of the lower spar fitting) in accordance with the alert service bulletin. Accomplishment of this paragraph constitutes terminating action for the repetitive inspections required by this AD.

Note 6: There is an error in Item 3.A.5.c. under ''Part 4—Terminating Action'' in the Accomplishment Instructions of Boeing Alert Service Bulletin 747–54A2184, Revision 1. The words, ''as shown by Figure 11,'' should read ''as shown by Figure 12.''

(1) For airplanes in Groups 1, 2, and 5 on which the interim repair described in Part 3 of the Accomplishment Instructions of the alert service bulletin has NOT been accomplished; and Groups 1 and 2 airplanes on which the requirements of AD 95–13–05, amendment 39–9285, have NOT been accomplished: Accomplish the terminating action prior to the accumulation of 8,000 total flight cycles or within 5 years after the effective date of this AD, whichever occurs later.

(2) For airplanes in Groups 1, 2, and 5 on which the interim repair described in Part 3 of the Accomplishment Instructions of the alert service bulletin HAS been accomplished: Accomplish the terminating action within 3,000 flight cycles after accomplishment of the interim repair, or within 18 months after the effective date of this AD, whichever occurs later.

(3) For airplanes in Groups 1 and 2 on which the requirements of AD 95–13–05, amendment 39–9285, HAVE been accomplished: Accomplish the terminating action within 8,000 flight cycles after accomplishment of the requirements of AD 95–13–05, amendment 39–9285, or within 5 years after the effective date of this AD, whichever occurs later.

Alternative Methods of Compliance

(f)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

(2) Alternative methods of compliance, approved previously in accordance with AD 99–05–06, amendment 39–11054, are approved as alternative methods of compliance with this AD.

Note 7: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(g) 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 airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(h) Except as provided in paragraphs (a)(2), (b)(2), (c)(2), and (d)(2) of this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin 747–54A2184, dated July 3, 1997, or Boeing Alert Service Bulletin 747–54A2184, Revision 1, dated May 6, 1999.

(1) The incorporation by reference of Boeing Alert Service Bulletin 747–54A2184, Revision 1, dated May 6, 1999, is approved by the Director of the Federal Register, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of Boeing Alert Service Bulletin 747–54A2184, dated July 3, 1997, was approved previously by the Director of the Federal Register as of March 18, 1999 (64 FR 10205, March 3, 1999).

(3) Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) This amendment becomes effective on July 5, 2000.

Issued in Renton, Washington, on June 9, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–15181 Filed 6–16–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–25–AD; Amendment 39–11792; AD 2000–12–14]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB SF340A and SAAB 340B Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Saab Model SAAB SF340A and SAAB 340B series airplanes, that requires a one-time inspection to detect chafing of the wires and harnesses in the cabin compartment ceiling; repair, if necessary; and installation of protective sleeving. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent false warnings of a hot engine exhaust tailpipe and intermittent signal failure, which could result in the consequent execution of unnecessary procedures by the flightcrew.

DATES: Effective July 24, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 24, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linkoping,

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

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Saab Model SAAB SF340A and SAAB 340B series airplanes was published in the **Federal Register** on April 24, 2000 (65 FR 21677). That action proposed to require a one-time inspection to detect chafing of the wires and harnesses in the cabin compartment ceiling; repair, if necessary; and installation of protective sleeving.

Comments

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

Conclusion

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

Cost Impact

The FAA estimates that 288 airplanes of U.S. registry will be affected by this AD, that it will take approximately 36 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts for the sleeving installation will cost approximately $358 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $725,184, or $2,518 per airplane.

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

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2000–12–14 SAAB Aircraft AB: Amendment 39–11792. Docket 2000–NM–25–AD.

Applicability: Model SAAB SF340A, serial numbers –004 through –159 inclusive; and SAAB 340B series airplanes, serial numbers –160 through –459 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (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 false warning of a hot engine exhaust tailpipe and intermittent signal failure, the consequent execution of unnecessary procedures by the flightcrew, accomplish the following:

(a) Prior to the accumulation of 14,000 total flight hours, or within 4,000 flight hours after the effective date of this AD, whichever occurs later: Perform a detailed visual inspection to detect chafing of the wires and harnesses in the cabin compartment ceiling, and install protective sleeving on all of the harnesses routed in the inspection area; in accordance with Saab Service Bulletin 340–92–027, dated December 10, 1999. Except as provided by paragraph (b) of this AD, prior to further flight, repair any chafing in accordance with the service bulletin.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, *etc.,* may be used. Surface cleaning and elaborate access procedures may be required.''

(b) For any chafing detected during the inspection required by paragraph (a) of this AD for which the service bulletin specifies to contact Saab for appropriate action: Prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Luftfartsverket (LFV) (or its delegated agent). For a repair method to be approved by the Manager, International Branch, ANM–116, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

Alternative Methods of Compliance

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

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

Special Flight Permits

(d) 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 airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) Except as provided by paragraph (b) of this AD, the actions shall be done in accordance with Saab Service Bulletin 340–92–027, dated December 10, 1999. 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 Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linkoping, Sweden. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in Swedish airworthiness directive 1–149, dated December 10, 1999.

(f) This amendment becomes effective on July 24, 2000.

Issued in Renton, Washington, on June 9, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–15184 Filed 6–16–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–164–AD; Amendment 39–11789; AD 2000–12–11]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300–600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Airbus Model A300–600 series airplanes, that currently requires repetitive ultrasonic inspections to detect cracks in the bolt holes inboard and outboard of rib 9 on the bottom booms of the front and rear wing spars, and repair, if necessary. This amendment requires revising the compliance thresholds for the inspection and requires that the inspections be repeated at reduced intervals. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent fatigue cracks in the bolt holes of the wing spars, which could result in reduced structural integrity of a wing spar.

DATES: Effective July 24, 2000.

The incorporation by reference of Airbus Service Bulletin A300–57–6037, Revision 1, dated August 31, 1995, as listed in the regulations, is approved by the Director of the Federal Register as of July 24, 2000.

The incorporation by reference of Airbus Service Bulletin A300–57–6037, dated August 1, 1994, as listed in the regulations, was approved previously by the Director of the Federal Register as of May 10, 1995 (60 FR 17990, April 10, 1995).

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 95–07–05, amendment 39–9187 (60 FR 17990, April 10, 1995), which is applicable to certain Airbus Model A300–600 series airplanes, was published in the **Federal Register** on April 20, 2000 (65 FR 21157). The action proposed to continue to require repetitive ultrasonic inspections to detect cracks in the bolt holes inboard and outboard of rib 9 on the bottom booms of the front and rear wing spars, and repair, if necessary. The action also proposed to revise the compliance thresholds for the inspection and require that the inspections be repeated at reduced intervals.

Comments

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

Conclusion

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

Cost Impact

There are approximately 75 airplanes of U.S. registry that will be affected by this AD.

The inspection that is currently required by AD 95–07–05, and retained in this AD, takes approximately 1 work hour per airplane to accomplish (excluding 10 work hours for access and close-up), at an average labor rate of $60 per work hour. Based on this figure, the cost impact of the currently required inspection on U.S. operators is estimated to be $4,500, or $60 per airplane, per inspection cycle.

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

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9187 (60 FR 17990, April 10, 1995), and by adding a new airworthiness directive (AD), amendment 39–11789, to read as follows:

2000–12–11 Airbus Industrie: Amendment 39–11789. Docket 98–NM–164–AD. Supersedes AD 95–07–05, Amendment 39–9187.

Applicability: Model A300–600 series airplanes, certificated in any category, on which Airbus Modification 10161 has not been installed in production.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracks in the bolt holes of the wing spars, which could result in reduced structural integrity of a wing spar, accomplish the following:

Ultrasonic Inspections

(a) Perform an ultrasonic inspection to detect fatigue cracking of the bolt holes inboard and outboard of rib 9 on the bottom booms of the front and rear wing spars, in accordance with Airbus Service Bulletin A300–57–6037, dated August 1, 1994, or Revision 1, dated August 31, 1995, at the applicable time specified in paragraph (a)(1) or (a)(2) of this AD. Repeat the inspection thereafter at intervals not to exceed 4,800 flight cycles or 11,000 flight hours, whichever occurs first.

(1) For airplanes on which Airbus Modification 8842 (reference Airbus Service Bulletin A300–57–6039) has not been installed: Inspect at the earlier of the times specified by paragraphs (a)(1)(i) and (a)(1)(ii) of this AD.

(i) Prior to the accumulation of 17,000 total flight cycles, or within 2,000 flight cycles after May 10, 1995 (the effective date of AD 95–07–05, amendment 39–9187), whichever occurs later.

(ii) Prior to the accumulation of 39,000 total flight hours.

(2) For airplanes on which Airbus Modification 8842 has been installed: Inspect at the earlier of the times specified by paragraphs (a)(2)(i) and (a)(2)(ii) of this AD.

(i) Within 17,000 flight cycles after accomplishment of Airbus Modification 8842, or within 2,000 flight cycles after May 10, 1995, whichever occurs later.

(ii) Within 39,000 flight hours after accomplishment of Airbus Modification 8842.

Corrective Action

(b) If any crack is found, prior to further flight, repair in accordance with Airbus Service Bulletin A300–57–6037, dated August 1, 1994, or Revision 1, dated August 31, 1995. Thereafter, perform the repetitive inspections required by paragraph (a) of this AD.

Alternative Methods of Compliance

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

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

Special Flight Permits

(d) 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 airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The actions shall be done in accordance with Airbus Service Bulletin A300–57–6037, dated August 1, 1994; or Airbus Service Bulletin A300–57–6037, Revision 1, dated August 31, 1995, as applicable. Airbus Service Bulletin A300–57–6037, Revision 1, dated August 31, 1995, contains the following list of effective pages:

Page No.	Revision level shown on page	Date shown on page
1, 2, 4–6	1	August 31, 1995.
3, 7–17	Original	August 1, 1994.

(1) The incorporation by reference of Airbus Service Bulletin A300–57–6037, Revision 1, dated August 31, 1995, is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of Airbus Service Bulletin A300–57–6037, dated August 1, 1994, was approved previously by the Director of the Federal Register as of May 10, 1995 (60 FR 17990, April 10, 1995).

(3) Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in French airworthiness directive 94–208–169(B)R2, dated October 8, 1997.

(f) This amendment becomes effective on July 24, 2000.

Issued in Renton, Washington, on June 9, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–15186 Filed 6–16–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 100, 110, and 165

[CGD01–99–191]

RIN 2115–AA97, AA98, AE46

Temporary Regulations: Sail Boston 2000, Port of Boston, MA.

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary regulations, including regulated areas, safety and security zones, and spectator anchorages before, during, and after Sail Boston 2000 events in the Port of Boston, Massachusetts, between July 10–16, 2000. These regulations are necessary to promote the safe navigation of vessels and the safety of life and property during the heavy volume of vessel traffic expected during the events.

DATES: This rule is effective from July 10, 2000 until July 16, 2000.

ADDRESSES: Comments and material received from the public, as well as documents, indicated in this preamble as being available in the docket, are part of docket CGD01–99–191 and are available for inspection and copying at the Coast Guard Marine Safety Office Boston, 455 Commercial Street, Boston, MA 02109 between 7:30 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Brian J. Downey, Marine Safety Office Boston, Waterways Management Division, (617) 223–3006.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On March 15, 2000, the Coast Guard published a notice of proposed

rulemaking (NPRM) entitled Temporary Regulations: Sail Boston 2000, Port of Boston, MA in the **Federal Register** Volume 65, Page 13926. The Coast Guard received two letters commenting on the proposed rule. No public hearing was requested, and none was held. Comments received have resulted in modification of the final rule; therefore, under 5 U.S.C. 553(d)(3), the Coast Guard finds good cause for making this rule effective in less than 30 days.

On March 9, 2000 the Captain of the Port, Boston hosted a meeting for small passenger vessel operators to detail the scope and content of the marine events and proposed regulations. The meeting yielded no comments.

Background and Purpose

The temporary regulations are for Sail Boston 2000 events held in Boston Harbor. These events are from July 10 through 16, 2000. This rule provides for the safety of life on navigable waters and to protect U.S. Navy vessels, tall ships, spectators, and the Port of Boston during these events. At the time of this Final rule, Sail Boston 2000 events include the following:

1. July 10–11: Tall Ship Rally.
2. July 11: Grand Parade of Sail.
4. July 11–16: Safety and Security Zones.
5. July 11–16: USS JOHN F. KENNEDY and Support Vessel Visits.
6. July 12–15: Public Boarding of Tall Ships.
7. July 15: Boston 2000 Fireworks Extravaganza.
8. July 16: Salute to USS CONSTITUTION Parade.
9. July 16: Tall Ships 2000 Race Restart.

Discussion of Comments and Changes

The Coast Guard received one telephonic comment regarding a slight coordinate inaccuracy in 33 CFR 110.T01–135–191(6) describing Spectator Anchorage B. The error was verified and corrected to properly reflect the anchorage boundary and has no regulatory effect. Moreover, additional coordinates were included for regulation locations throughout this Final rule. The coordinates are intended to clarify locations described in the Final rule and do not change its regulatory impact.

The Coast Guard received a written comment regarding marine sanitation pumpout boats. The Commonwealth of Massachusetts is promoting the use of pumpout boats among spectator craft to reduce potential sewage discharge in state waters. The comment suggested pumpout boats should be permitted to move freely among the spectator anchorages during the various marine events to remove spectator craft sewage. Further, the pumpout boats intend to provide no cost service to the attending boating public during the marine events. The suggestion conflicts with the restrictions imposed as temporary regulations hereunder in amendments to 33 CFR parts 100 and 110. However, the pumpout boats will proactively advance the Coast Guard's and Massachusetts' pollution prevention policies. The Coast Guard decided to alter 33 CFR 100.T01–191(9) and 33 CFR 110.T01–135–191(b)(xii) to permit pumpout boats limited access to move within specific spectator anchorages. The regulation does not permit pumpout boats to cross any main channels or intended tall ship parade routes during the effective periods.

The Coast Guard received another comment requesting non-participating tall ships to be permitted into safety zones during effective periods. The temporary safety zones are specifically and clearly designed to facilitate participating vessels only. Participating vessels are represented by the event sponsor who is the Coast Guard Marine Event Permit applicant. As part of the marine event permit, the Coast Guard requires the event sponsor to satisfy various safety, pollution prevention, and vessel traffic requirements before the event permit is issued. Should non-participating vessels enter the safety zones, it will cause confusion and diminish safety, as the Masters will not be apprised of special operating instructions. The Coast Guard has not amended regulations in response to this comment. The same comment also suggested Spectator Anchorage G to be exclusively used by tall ships which choose not to use berthing. The regulations were not changed in response to this comment because Spectator Anchorage G already permits use by any vessel which is authorized by the Captain of the Port, which includes tall ships which choose not to use berthing.

The Coast Guard also received a comment regarding the USS JOHN F. KENNEDY'S security zone detailed in 33 CFR 165.TO1–195. The comment suggested there is little need for the security zone to extend continuously from July 10, 2000 through July 16, 2000. The Coast Guard has decided to leave the defined security zone boundary in 33 CFR 165.TO1–195(a), however, the Captain of the Port will broadcast times when mariners will be allowed to pass through the security zone. Times when mariners can pass through the security zone will be announced via Coast Guard Safety Marine Information Broadcasts on VHF radio using channels 13 and 16. Announcements will start at least one hour prior to when mariners will be permitted in the zone, and will continue for the period the Captain of the Port permits transit through the zone.

The Coast Guard also changed the introductory note in § 110.155 to emphasize the mariners' need to exercise caution while using the temporarily designated spectator anchorages for Sail Boston 2000. While the Coast Guard is not aware of any safety problems associated with these temporary spectator anchorages, the Coast Guard makes no assurances of the holding power of each area nor that the bottoms are free from obstructions. Mariners are advised to take appropriate precautions including using all means available to ensure their vessels are not dragging anchor. Verbal discussion at an April 24, 2000 Marine Safety Office Boston Waterways Management meeting suggested an alternate arrangement for spectator Anchorages K and L found in 33 CFR 110.T01–135–191(a)(14) and (15). To better accommodate Parade of Sail viewing from a Disabled American Veterans' site on Long Island, the Coast Guard has switched Spectator Anchorages K and L functions on July 10–11, 2000. On July 10–11, 2000 Spectator Anchorage L will be a special use anchorage. On July 10–11, 2000 Spectator Anchorage K will accommodate inspected small passenger vessels. On July 15–16, 2000 Spectator Anchorage K will be a special use anchorage as originally planned. On July 15–16, 2000 Spectator Anchorage L will accommodate inspected small passenger vessels as originally planned. The partial anchorage switch improves viewing for the disabled without affecting safety. This change from the NPRM does not alter the regulatory effect of this final rule since the boundaries of the anchorages remain the same, and spectator areas for inspected small passenger vessels continue to be provided.

Regulated Areas

Regulated Area A covers all waters of Broad Sound and Boston Outer Harbor bounded by lines drawn along the coordinates 070°52′00″ W, 070°57′13″ W, 42°17′30″ N, and 42°24′42″ N including the following waterways: Nahant Bay, Broad Sound, Boston North Channel, Boston South Channel, Nubble Channel, Hull Bay, and Nantasket Roads. The area also includes all temporary spectator anchorages established in 33 CFR 110.T01–135–191. Regulated Area A is applicable

from 8 a.m. until 6 p.m. on July 11, 2000 and 8 a.m. until 6 p.m. on July 16, 2000.

Regulated Area B covers all waters of Boston Inner Harbor westward from a line drawn between Deer Island at position 42°20′38″ N, 070°57′13″ W and Long Island at position 42°19′51″ N, 070°57′13″ W including President Roads, Sculpin Ledge Channel, Dorchester Bay, Western Way, the Boston Main Channel, the Reserved Channel to the Summer Street retractile bridge, the Fort Point Channel to the Congress Street Bridge, the Charles River to the Gridley Locks at the Charles River Dam, the Mystic River to the Alford Street Bridge, and the Chelsea River to the McArdle Bridge. The area also includes all temporary spectator anchorages established in 33 CFR 110.T01–135–191. Regulated Area B is applicable from 8 a.m. on July 11, 2000 until 6 p.m. on July 16, 2000.

Regulated Area C is an Emergency Transit Lane from Boston Main Channel Light ''5'' to Charlestown Navy Yard Pier ''1'' extending fifty (50) yards into the outbound lane of the Boston Main Channel. The lane allows unlimited access to emergency and law enforcement vessels. The emergency lane restriction imposed by Regulated Area C are applicable from 8 a.m. until 6 p.m. on July 11, 2000 and from 8 a.m. until 6 p.m. July 16, 2000.

Anchorage Regulations

The Coast Guard has established temporary anchorage regulations for participating Sail Boston 2000 ships and spectator craft. 33 CFR 110.134 is temporarily suspended by this regulation and new spectator anchorages and regulations are temporarily established.

The anchorage regulations temporarily establish spectator anchorages for spectator craft or Sail Boston 2000 participant vessel use only. They restrict all other vessels from using these spectator anchorages during Sail Boston 2000 events. The applicable dates for the temporary spectator anchorages are July 10 and 11, 2000 and July 15 and 16, 2000.

Security Zone

A security zone protecting the moored U.S. naval aircraft carrier USS JOHN F. KENNEDY is effective from July 10, 2000 until July 16, 2000 around Boston Inner Harbor's North Jetty, in South Boston. All safety and security zones will be easily identifiable by patrolling Coast Guard and law enforcement craft.

Safety Zones

On July 11, 2000 from 8 a.m. until 6 p.m. a three hundred (300) yard moving safety zone around participating tall ships is imposed for Broad Sound and Boston Harbor. The safety zone will ensure the safety of participating tall ships and spectator craft during the Grand Parade of Sail. On July 15, 2000 a four hundred (400) yard safety zone surrounding fireworks barges in Boston Inner Harbor is imposed from 8 p.m. until 11 p.m. The safety zone will ensure the safety of spectator craft during the scheduled fireworks displays. From 8 a.m. until 6 p.m July 16, 2000, a three hundred (300) yard moving safety zone around each participating tall ship is effective for Boston Harbor and Broad Sound. The safety zone will ensure the safety of participating tall ships and spectator craft during the Salute to the USS CONSTITUTION Parade. On July 16, 2000 a three (3) square mile safety zone is in effect for Massachusetts Bay off of Nahant from 10 a.m. until 6 p.m. This three (3) square mile area will serve as the staging area for the Tall Ships 2000 Race Restart. The safety zone will ensure the safety of participating tall ships and spectator craft during the Tall Ships 2000 Race Restart. A three hundred (300) yard moving safety zone around each participating tall ship is also in effect for the Tall Ships 2000 Race Restart as each proceeds from its respective berth to the staging area on July 16, 2000. For more navigational chart information regarding this safety zone, see **ADDRESSES**.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policy and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, 1979). The economic impact of this rule is expected to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Although these regulations impose traffic restrictions in portions of Boston Harbor during the events, the effect of the regulations are not significant for the following reasons: The regulated areas, spectator anchorages, and safety and security zones are limited in duration; and extensive advance notice was made to the maritime community via Local Notice to Mariners, facsimile, marine safety information broadcasts, local Port Operators' Group meetings, Propeller Club meetings, the Internet, and Boston area newspapers and media. Also, on March 9 the Captain of the Port, Boston hosted a meeting of small passenger vessel operators to detail the scope and content of the marine events and proposed regulations. The advance notice permits mariners to adjust their plans accordingly. Additionally, these regulated areas are tailored to impose the least impact on maritime interests without compromising safety.

Similar regulated areas and safety and security zones were established for Sail Boston 1992 events. Based upon the Coast Guard's experiences from that previous event of similar magnitude, these regulations have been narrowly tailored to impose the least impact on maritime interests yet provide the necessary level of safety.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), an initial review was conducted to determine whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

For the reasons stated in the Regulatory Evaluation section above, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule does not have a significant economic impact on a substantial number of small entities.

This rule affects the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in portions of Broad Sound and Boston Inner and Outer Harbors during various times from July 10 until 16, 2000. These regulations do not have a significant economic impact on a substantial number of small entities because the Coast Guard notified the public via mailings, facsimiles, Local Notice to Mariners, marine safety information broadcasts, local Port Operators' Group meetings, Propeller Club meetings, the media, the Internet, and Boston area newspapers. Also, on March 9, 2000 the Captain of the Port, Boston hosted a meeting of small passenger vessel operators to detail the scope and content of the marine events and proposed regulations. In addition, the sponsoring organization, Sail Boston 2000, Inc., announced event information in local newspapers, pamphlets, and television and radio broadcasts. The advance notice permitted mariners to adjust their plans accordingly. Although these regulations apply to a substantial

portion of the Port of Boston, areas for viewing the Parade of Sail, Boston 2000 Fireworks Extravaganza, Salute to USS CONSTITUTION, and Tall Ships 2000 Race Restart are established to maximize the use of the waterways by commercial vessels that usually operate in the affected areas.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard offered to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking.

Assistance was offered at various public forums including Port Operators' Group meetings, Propeller Club meetings, Maritime Incident Resources and Training drills and meetings, and brochure distribution. In addition, information including the preceding NPRM, was posted on Marine Safety Office Boston's Web Page. Moreover, the Coast Guard hosted an informational meeting on March 9, 2000 to thoroughly explain the rule to local small passenger vessel operators.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

An analysis of this rule under E.O. 13132 has determined that this rule does not have implications for federalism under that order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local or tribal government or the private sector to incur direct costs without the Federal Government having first provided the funds to pay those costs. This rule does not impose an unfunded mandate.

Taking of Private Property

This rule does not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

An analysis of this rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks has determined that this rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under figure 2–1, paragraphs 34 (f, g, and h) of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. A written ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES**.

List of Subjects

33 CFR Part 100

Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

33 CFR Part 110

Anchorage grounds.

33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Parts 100, 110, and 165 as follows:

PART 100—MARINE EVENTS

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233 through 1236; 49 CFR 1.46; 33 CFR § 100.35

2. Add temporary § 100.T01–191 to read as follows:

§ 100.T01–191 Regulated Area, Broad Sound, Boston Outer Harbor, and Boston Inner Harbor.

(a) Regulated Areas: All regulated area coordinates are NAD 1983.

(1) *Regulated Area A.*

(i) *Location.* The following is Regulated Area A: All waters of Broad Sound and Boston Outer Harbor bounded by 070°52′00″ W, 070°57′13″ W, 42°17′30″ N, and 42°24′42″ N including the following waterways: Nahant Bay, Broad Sound, Boston North Channel, Boston South Channel, Nubble Channel, Hingham Bay, Hull Bay, and Nantasket Roads.

(ii) *Enforcement period.* Paragraph (a)(1)(i) of this section is enforced from 8 a.m. until 6 p.m. on July 11 and July 16, 2000 respectively.

(2) *Regulated Area B.*

(i) *Location.* The following is Regulated Area B: All waters in Boston Inner Harbor westward from a line drawn between Deer Island at position 42°20′38″ N, 070°57′13″ W and Long Island at position 42°19′51″ N, 070°57′13″ W including President Roads, Sculpin Ledge Channel, Dorchester Bay, Western Way, the Boston Main Channel, the Reserved Channel to the Summer Street retractile bridge, the Fort Point Channel to the Congress Street Bridge, the Charles River to the Gridley Locks at the Charles River Dam, the Mystic River to the Alford Street Bridge, and the Chelsea River to the McArdle Bridge.

(ii) *Enforcement period.* Paragraph (a)(2)(i) of this section is enforced from 8 a.m. on July 11, 2000 until 6 p.m. on July 16, 2000.

(3) *Regulated Area C.*

(i) *Location.* The following is Regulated Area C: All waters from Boston Main Channel Light ''5'' to Charlestown Navy Yard Pier ''1'' extending fifty (50) yards into the outbound lane of the Boston Main Channel.

(ii) *Enforcement period.* Paragraph (a)(3)(i) of this section is enforced from 8 a.m. until 6 p.m. on July 11 and July 16, 2000 respectively.

(b) *Special local regulation.* (1) During the effective period, vessel operators transiting through Regulated Areas A and B shall proceed at no wake speeds not to exceed five (5) miles per hour, unless otherwise authorized by the Captain of the Port.

(2) Vessel operators shall comply with the instructions of on-scene Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, U.S. Navy, local, state, and federal law enforcement vessels.

(3) After completion of the fireworks displays on July 15, 2000, vessel operators within Regulated Area B are prohibited from passing outbound patrol vessels showing blue lights.

(4) Vessel operators must remain in established spectator anchorages established in 33 CFR § 110.T01.135–191, from 8 a.m. until 6 p.m. on July 11 and 16, 2000 except as authorized by the Captain of the Port.

(5) Vessel operators anchored in Spectator Anchorages N, P, or Q established in 33 CFR § 110.T01–135–191 may depart those anchorages to view offshore activities following the Salute to USS CONSTITUTION on July 16, 2000, provided they observe enforced safety zones and transit outside main channels. Vessel operators who cannot safely navigate outside of established channels must remain anchored until the channels are reopened to routine navigation.

(6) Vessels, except for those participating in the Grand Parade of Sail and Salute to the USS CONSTITUTION or duly authorized patrol craft, may not enter or remain in the Reserved Channel or block access to any tall ship mooring sites in Regulated Area B from 8 a.m. until 6 p.m. on July 11 and July 16, 2000 except as authorized by the Captain of the Port.

(7) Vessel operators transiting the Reserved Channel during authorized times, not mentioned in (b)(6) of this section, must enter and keep to the starboard side of the channel, proceeding as directed by on-scene Coast Guard patrol personnel. Vessel traffic shall move in a counterclockwise direction around the turning point established off the Sithe New England power plant, as marked by an appropriate on-scene patrol vessel. Vessel operators shall exit the Reserved Channel keeping to the starboard side of the channel.

(8) Vessel operators transiting the regulated areas must maintain at least fifty (50) feet safe distance from all moored tall ships and make way for all deep draft vessel traffic underway in the regulated areas.

(9) Based on COTP approval and direction, vessels commercially engaged in the collection and legal disposal of marine sewage may operate within spectator anchorages during the enforcement periods.

(10) Vessels, except emergency, law enforcement, and those authorized by the Captain of the Port, may not transit through Regulated Area C, which has been designated as an Emergency Transit Lane.

(c) *Effective dates.* This section is effective from July 10, 2000 until July 16, 2000.

PART 110—ANCHORAGE GROUNDS

3. The authority citation for Part 110 continues to read as follows:

Authority: 33 U.S.C. 471; 1221 through 1236, 2030, 2035, 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g).

4. From July 10, 2000 through July 16, 2000, § 110.134 is temporarily suspended and § 110.T01–135–191 is temporarily added as follows:

§ 110.T01–135–191 Boston Harbor, Mass.

Note: Caution: The designated spectator anchorages in this section have not been specially surveyed or inspected and navigational charts may not show all seabed obstructions or shallowest depths. Additionally, the anchorages are in areas of substantial currents. Mariners who use these temporary anchorages should take appropriate precautions including using all means available to ensure your vessel is not dragging anchor.

(a) *The anchorages.* All anchorages in this paragraph are applicable as specified. Vessel operators using the anchorages in this paragraph must comply with the general operational requirements specified in paragraph (b) of this section. All coordinates are NAD 1983.

(1) *Long Island Anchorage.* (i) All bearings are reflected as true. All waters East of Long Island, bounded as follows: Beginning at the southwestern most point of Gallups Island, approximate position 42°19′30″ N, 070°56′24″ W; then 270° to Long Island, approximate position 42°19′30″ N, 070°57′36″ W; then southerly along the eastern shore line of Long Island to Bass Point, approximate position 42°18′50″ N, 070°57′56″ W; then to the northernmost point of Rainsford Island, approximate position 42°18′47″ N, 070°57′07″ W; then to Georges Island Gong Buoy ''6,'' approximate position 42°19′00″ N, 070°55′50″ W; and then to the point of beginning.

(ii) This anchorage ground is designated for the exclusive use of recreational vessels.

(iii) Paragraph (a)(1)(i) through (ii) is applicable from 12 noon on July 10, 2000 until 6 p.m. on July 11, 2000 and from 12 noon on July 15, 2000 until 6 p.m. on July 16, 2000.

(2) *Castle Island Anchorage.* (i) All waters bounded on the north by Castle Island and adjacent land; on the east by a line between Castle Rocks Fog Signal Light, located at approximate position 42°20′08″ N, 071°00′13″ W and Old Harbor Shoal Buoy ''2'', located at approximate position 42°19′38″ N, 071°00′02″ W; on the southeast by a line between Old Harbor Shoal Buoy ''2'' and Old Harbor Buoy ''6,'' located at approximate position 42°19′01″ N, 071°01′21″ W; and on the west by a line running due north from Old Harbor Buoy ''6,'' located at approximate position 42°19′01″ N, 071°01′21″ W to the shore line at City Point, at approximate position 42°19′56″ N, 071°01′20″ W.

(ii) This anchorage ground is designated for the exclusive use of recreational vessels.

(iii) Paragraph (a)(2)(i) through (ii) is applicable from 12 noon on July 10, 2000 until 6 p.m. on July 11, 2000 and from 12 noon on July 15, 2000 until 6 p.m. on July 16, 2000.

(3) *Explosives Anchorage.* (i) In the lower harbor, bounded on the northeast by a line between the northeast end of Peddocks Island, approximate position 42°18′10″ N, 070°55′40″ W and the northeast end of Rainsford Island, approximate position 42°18′43″ N, 070°56′55″ W; on the northwest by Rainsford Island; on the southwest by a line between the western extremity of Rainsford Island, approximate position 42°18′40″ N, 070°57′44″ W and the westernmost point of Peddocks Island, approximate position 42°17′27″ N, 070°57′01″ W; and on the southeast by Peddocks Island.

(ii) This anchorage ground is designated for the exclusive use of recreational vessels.

(iii) Paragraph (a)(3)(i) through (ii) is applicable from 12 noon on July 10, 2000 until 6 p.m. on July 11, 2000 and from 12 noon on July 15, 2000 until 6 p.m. on July 16, 2000.

(4) *Tall Ship Anchorage.* (i) All bearings are reflected as true. All waters in the outer harbor in Broad Sound and Nahant Bay, bounded as follows: On the east by a line connecting Boston North Channel Lighted Bell Buoy ''2'' on Finns Ledge to Off Rock, located at approximate position 42°22′10″ N, 070°55′10″ W, Littles Point, Swampscott, MA, located at approximate position 42°27′52″ N, 070°53′10″ W and bounded on the west by a line connecting approximate position 42°22′11″ N, 070°56′17″ W and approximate position 42°24′05″ N, 070°57′05″ W; then running from approximate position 42°24′05″ N, 070°57′05″ W to Bailey's Hill Nahant, MA, approximate position 42°25′02″ N, 070°55′20″ W; then north to include Nahant Harbor and Nahant Bay.

(ii) This anchorage is designated for the exclusive use of tall ships participating in the Sail Boston 2000 activities. Vessel movements through

these areas during the periods specified, shall be directed by on-scene Coast Guard patrol personnel.

(iii) Paragraph (a)(4)(i) through (ii) is applicable from 12 noon on July 10, 2000 until 6 p.m. on July 16, 2000.

(5) *Mystic Anchorage.* (i) All bearings are reflected as true. All waters in the inner harbor in the Mystic River off Charlestown, in the vicinity of the old Amstar and Revere Sugar docks, bounded as follows: By a line running along 071°04′00″ W extending into the river four hundred (400) feet from shore; then turning 100° and running to the approximate position 071°03′44″ N, then running east along 071°03′44″ W for four hundred (400) feet back to shore; and then running to the point of beginning.

(ii) This anchorage is designated for the exclusive use of tall ships participating in the Sail Boston 2000 activities. Vessel movements through these areas during the periods specified, shall be directed by on-scene Coast Guard patrol personnel.

(iii) Paragraph (a)(5)(i) through (ii) is applicable from 12 noon on July 10, 2000 until 6 p.m. on July 16, 2000.

(6) *Spectator Anchorage B.* (i) All bearings are reflected as true. All waters in the inner harbor along the shoreline of East Boston, east of the Boston Main Channel, bounded as follows: By a line from Boston Main Channel Light ''14,'' approximate position 42°22′17″ N, 071°02′44″ W then extending 270° to the Main Channel's edge at approximate position 42°22′18″ N, 071°02′46″ W, then southwesterly, along Boston Main Channel's eastern edge to approximate position 42°22′17″ N, 071°02′46″ W, then running to approximate position 42°21′50″ N, 071°02′32″ W and then to the southwest corner of Massport Pier ''1,'' East Boston, approximate position 42°21′52″ N, 071°00′30″ W.

(ii) This anchorage is designated for the exclusive use of recreational vessels 45 feet or less in length with superstructures not to exceed ten (10) feet in height.

(iii) Paragraph (a)(6)(i) through (ii) is applicable from 12 noon on July 10, 2000 until 6 p.m. on July 11, 2000 and from 12 noon on July 15, 2000 until 6 p.m. on July 16, 2000.

(7) *Spectator Anchorage C.* (i) All bearings are reflected as true. All waters in the inner harbor along the southern edge of Cashman's shipyard, East Boston eastward of the Main Channel, situated to provide a channel between it and Spectator Anchorage D, allowing access to Bird Island Flats, bounded as follows: beginning at approximate position 42°21′32.7″ N, 071°01′53″ W; then 210° to the northern edge of the Boston Main Channel, approximate position 42°21′22″ N, 071°02′03″ W; then northwesterly along Boston Main Channel's edge to approximate position 42°21′42″ N, 71°02′28.4″ W; then running to approximate position 42°21′48″ N, 071°02′23″ W; and then running to the point of beginning.

(ii) This anchorage is designated for the exclusive use of inspected small passenger vessels (certificated by the Coast Guard under Subchapter T and K of Title 46, Code of Federal Regulations).

(iii) Paragraph (a)(7)(i) through (ii) is applicable from 12 noon on July 10, 2000 until 6 p.m. on July 11, 2000 and from 12 noon on July 15, 2000 until 6 p.m. on July 16, 2000.

(8) *Spectator Anchorage D.* (i) All bearings are reflected as true. All waters in the inner harbor along the southwestern edge of Logan International Airport, East Boston, east of the Main Channel, situated to provide a channel between it and Spectator Anchorage C, allowing access to Bird Island Flats, bounded as follows: Beginning at Bird Island Flats Buoy ''2,'' approximate position 42°21′29″ N, 071°01′46″ W then running 224° to the northern edge of the Boston Main Channel, approximate position 42°21′20″ N, 071°01′57″ W; then to approximate position 42°21′03″ N, 071°01′18″ W; then turning 024° and running to the shore, approximate position 42°21′13″ N, 071°01′11″ W; and then running to the point of beginning at Bird Island Flats Buoy ''2,'' approximate position 42°21′29″ N, 071°01′46″ W.

(ii) This anchorage is designated for the exclusive use of recreational vessels forty-five (45) feet or less in length. No vessels may anchor in Spectator Anchorage D from 12:01 a.m. until 6 a.m. and from 6:01 p.m. to 11:59 p.m. on July 11, 2000 and July 16, 2000.

(iii) Paragraph (a)(8)(i) through (ii) is applicable on July 11, 2000 and July 16, 2000.

(9) *Spectator Anchorage E.* (i) All bearings are reflected as true. All waters in the inner harbor along the southeastern edge of Logan International Airport, bounded as follows: Beginning at Boston Main Channel Lighted Buoy ''12,'' approximate position 42°20′58″ N, 071°01′08″ W; then turning 030° and running to shore, approximate position 42°21′08″ N, 071°01′00″ W; then along the shore to approximate position 42°20′48″ N, 071°00′27.5′ W; then running to approximate position 42°20′38.3″ N, 071°00′35.6″ W; then running along the northern edge of the Boston Main Channel to the point of beginning.

(ii) This anchorage is designated for the exclusive use of recreational vessels with a height above water at any point not to exceed fifty (50) feet.

(iii) No vessels may anchor in Spectator Anchorage E from 12:01 a.m. to 6 a.m. and from 6:01 p.m. to 11:59 p.m. on July 11th and 16th, 2000.

(iv) Paragraph (a)(9)(i) through (iii) is applicable July 11, 2000 and July 16, 2000.

(10) *Spectator Anchorage F.* (i) All bearings are reflected as true. All waters in the inner harbor along the Massport North Jetty, South Boston, bounded as follows: Beginning at approximate position 42°21′05″ N, 071°01′54′ W; then running to approximate position 42°20′59″ N, 071°01′39″ W; then running to approximate position 42°20′56″ N, 071°01′41″ W; then running northwesterly along the face of the Massport North Jetty to the corner of the Jetty at approximate position 42°21′01″ N, 071°01′56″ W; and then running to the point of beginning.

(ii) This anchorage is designated for the exclusive use of recreational vessels forty-five (45) feet or less in length with superstructures not to exceed ten (10) feet in height.

(iii) Paragraph (a)(10)(i) through (ii) is applicable from 12 noon on July 10, 2000 until 6 p.m. on July 11, 2000 and from 12 noon on July 15, 2000 until 6 p.m. on July 16, 2000.

(11) *Spectator Anchorage G.* (i) All waters in the inner harbor along the Fan Pier, South Boston, situated to provide a channel between it and Boston Special Anchorage, allowing access to the Fort Point Channel, bounded and described as follows: beginning at approximate position 42°21′22″ N, 071°02′50″ W; then running to approximate position 42°21′24″ N, 071°02′38″ W; then running to approximate position 42°21′04″ N, 071°02′31″ W; then running to approximate position 42°21′20″ N, 071°02′26″ W; then running to Pier ''4'' Wreck Buoy (white and orange can, privately maintained), approximate position 42°21′14″ N, 071°02′31″ W; and then running to the point of beginning.

(ii) This anchorage is designated as a special use anchorage, as deemed appropriate by the Captain of the Port. No vessel may anchor in this Anchorage without the permission of the Captain of the Port.

(iii) Paragraph (a)(11)(i) through (ii) is applicable from 12 noon on July 10, 2000 until 6 p.m. on July 11, 2000 and from 12 noon on July 15, 2000 until 6 p.m. on July 16, 2000.

(12) *Spectator Anchorage H.* (i) All waters in the inner harbor bounded as follows: Beginning at the Boston Main

Channel Lighted Buoy ''6'', approximate position 42°20′12″ N, 070°59′55″ W; then running to 42°20′12″ N, 070°59′14.5″ W; then to Boston Main Channel Lighted Buoy ''4,'' approximate position 42°20′04″ N, 070°59′27″ W; and then running to the point of beginning.

(ii) This anchorage is designated for the exclusive use of recreational vessels of any size.

(iv) Paragraph (a)(12)(i) through (ii) is applicable from 12 noon on July 10, 2000 until 6 p.m. on July 11, 2000 and from 12 noon on July 15, 2000 until 6 p.m. on July 16, 2000.

(13) *Spectator Anchorage J.* (i) All waters in the inner harbor to include the waters between the Main Channel and Governor's Island Flats, bounded as follows: Beginning at approximate position 42°20′12″ N, 070°59′14.5″; W; then running to approximate position 42°20′30″ N, 70°59′14.5″ W; then running to President Roads Anchorage Lighted Buoy ''D'', located at approximate position 42°20′33″ N, 70°58′52″ W; then running to approximate position 42°20′05″ N, 070°58′43.5″ W; then running to Boston Main Channel Lighted Bell Buoy ''4'' located at approximate position 42°20′04″ N, 070°59′26″ W; and then running to the point of beginning.

(ii) This anchorage is designated for the exclusive use of commercial fishing vessels.

(iii) Paragraph (a)(13)(i) through (ii) is applicable from 12 noon on July 10, 2000 until 6 p.m. on July 11, 2000 and from 12 noon on July 15, 2000 until 6 p.m. on July 16, 2000.

(14) *Spectator Anchorage K.* (i) All bearings are reflected as true. All waters in the inner harbor between the Main Channel and Deer island Flats as follows: Beginning at a point bearing 237°, 522 yards from Deer Island Light; then to a point bearing 254°, 2,280 yards from Deer Island Light; then to a point bearing 261°, 2,290 yards from Deer Island Light; then to a point bearing 278°, 2,438 yards from Deer Island Light; then to a point bearing 319°, 933 yards from Deer Island Light; then to a point bearing 319°, 666 yards from Deer Island Light; and then to the point of beginning.

(ii) This anchorage is designated for the exclusive use of inspected small passenger vessels (certificated by the Coast Guard under Subchapter T and K of Title 46, Code of Federal Regulations), sailing school vessels, uninspected passenger vessels, and bareboat charter vessels from 12 noon on July 10, 2000 until 6 p.m. on July 11, 2000.

(iii) This anchorage is a special use anchorage, as deemed appropriate by the Captain of the Port on July 15–16, 2000. No vessel may anchor in this Anchorage without the permission of the Captain of the Port from 12 noon on July 15, 2000 until 6 p.m. on July 16, 2000.

(iv) Paragraph (a)(14)(i) through (iii) is applicable from 12 noon on July 10, 2000 until 6 p.m. on July 11, 2000 and from 12 noon on July 15, 2000 until 6 p.m. on July 16, 2000.

(15) *Spectator Anchorage L.* (i) In the inner harbor off the northwestern edge of Long Island into the entrance to Sculpin Ledge Channel, bounded as follows: Beginning at Boston Main Channel Lighted Buoy ''17,'' approximate position 42°1′57″ N, 070°57′32″ W; then running to approximate position 42°19′40.5″ N, 070°57′50″ W; then running to approximate position 42°19′40.5″ N, 070°58′43.8″ W; then running to Boston Main Channel Lighted Buoy ''1,'' approximate position 42°19′52″ N, 070°58′44″ W; and then to the point of beginning.

(ii) This anchorage is a special use anchorage, as deemed appropriate by the Captain of the Port on July 10–11, 2000. No vessel may anchor in this Anchorage without the permission of the Captain of the Port from 12 noon on July 10, 2000 until 6 p.m. on July 11, 2000.

(iii) This anchorage is designated for the exclusive use of inspected small passenger vessels (certificated by the Coast Guard under Subchapter T and K of Title 46, Code of Federal Regulations), sailing school vessels, uninspected passenger vessels, and bareboat charter vessels from 12 noon on July 15, 2000 until 6 p.m. on July 16, 2000.

(iv) Paragraph (a)(15)(i) through (iii) is applicable from 12 noon on July 10, 2000 until 6 p.m. on July 11, 2000 and from 12 noon on July 15, 2000 until 6 p.m. on July 16, 2000.

(16) *Spectator Anchorage M.* (i) All waters in the inner harbor along the northern edge of Spectacle Island, bounded as follows: Beginning at 42°20′00″ N, 071°00′00″ W; then running to Boston Main Channel Lighted Buoy ''3,'' approximate position 42°19′52″ N, 070°59′28″ W; then to Boston Main Channel Lighted Buoy ''1,'' approximate position 42°19′52″ N, 070°58′44″ W; then running to approximate position 42°19′40″ N, 070°59′57″ W; and then running to the point of beginning.

(ii) This anchorage is designated for the exclusive use of recreational vessels of any size.

(iii) Paragraph (a)(16)(i) through (ii) is applicable from 12 noon on July 10, 2000 until 6 p.m. on July 11, 2000 and from 12 noon on July 15, 2000 until 6 p.m. on July 16, 2000.

(17) *Spectator Anchorage N.* (i) All waters in the outer harbor along the western edge of the Boston North Channel bounded as follows: Beginning at Boston North Channel Lighted Bell Buoy ''10,'' approximate position 42°20′37″ N, 070°56′32″ W; then running to Boston North Channel Lighted Buoy ''4,'' approximate position 42°21′38″ N, 070°55′47″ W; then running to 42°22′00″ N, 070°56′24″ W; then running to approximate position 42°21′40″ N, 070°56′17.5″; W; then running to approximate position 42°21′20.5″ N, 070°56′10″ W; then running to approximate position 42°20′39″ N, 070°56′38.5″ W; and then running to the point of beginning.

(ii) This anchorage is designated for any latecoming spectator craft on hand to view the Grand Parade of Sail and Salute to USS CONSTITUTION Parade.

(iii) Paragraph (a)(17)(i) through (ii) is applicable from 12 noon on July 10, 2000 until 6 p.m. on July 11, 2000 and from 12 noon on July 15, 2000 until 6 p.m. on July 16, 2000.

(18) *Spectator Anchorage P.* (i) All bearings are reflected as true. All waters in the outer harbor between the eastern edge of the Boston North Channel and Boston South Channel, bounded as follows: Beginning at Boston North Channel Lighted Buoy ''3,'' approximate position 42°21′55″ N, 070°55′13″ W; then running southeast to Boston South Channel Lighted Buoy ''6,'' approximate position 42°21′14″ N, 070°54′48″ W; then running along the northern edge of Boston South Channel to Boston South Channel Lighted Buoy ''10,'' approximate position 42°20′46″ N, 070°55′10″ W; then running to Boston North Channel Lighted Buoy ''PR,'' approximate position 42°20′29″ N, 070°56′13″ W; then running along the eastern edge of the Boston North Channel to the point of beginning.

(ii) This anchorage is designated for any latecoming spectator craft on hand to view the Grand Parade of Sail and Salute to USS CONSTITUTION Parade.

(iii) Paragraph (a)(18)(i) through (ii) is applicable from 12 noon on July 10, 2000 until 6 p.m. on July 11, 2000 and from 12 noon on July 15, 2000 until 6 p.m. on July 16, 2000.

(19) *Spectator Anchorage Q.* (i) All waters in the outer harbor at the entrance to the Boston South Channel, bounded as follows: Beginning at Boston North Channel Lighted Buoy ''PR,'' approximate position 42°20′29″ N, 070°56′13″ W; then running to Boston South Channel Lighted Buoy ''10,'' approximate position 42°20′46″ N,

070°55′10″ W; then running to Boston South Channel Buoy ''11,'' approximate position 42°20′29″ N, 070°55′28″ W then running to approximate position 42°20′15″ N, 070°56′23″ W; and then running to the point of beginning.

(ii) This anchorage is designated for the exclusive use of inspected small passenger vessels (certificated by the Coast Guard under Subchapter T and K of Title 46, Code of Federal Regulations), sailing school vessels, uninspected passenger vessels, and bareboat charter vessels.

(iii) Paragraph (a)(20)(i) through (ii) is applicable from 12 noon on July 10, 2000 until 6 p.m. on July 11, 2000 and from 12 noon on July 15, 2000 until 6 p.m. on July 16, 2000.

(b) *The regulations.* The anchorages designated in paragraphs (a)(1) through (19) of this section are subject to the following regulations:

(1) General Operational Requirements for all anchorages. Vessel operators using any of the anchorages established in this section shall:

(i) Ensure their vessels are properly anchored and remain safely in position at anchor during marine events.

(ii) Comply as directed by on-scene Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, U.S. Navy, local, state, and federal law enforcement vessels.

(iii) Vacate anchorages after termination of their effective periods.

(iv) Buoy with identifiable markers and release anchors fouled on lobster trap lines if such anchors cannot be freed or raised.

(v) Use only Spectator Anchorages N, P, or Q if going offshore to view the tall ship events occurring in Massachusetts Bay on July 11, 2000 and July 16, 2000.

(vi) Display anchor lights when anchoring at night in any anchorage.

(vii) Not leave vessels unattended in any anchorage at any time.

(viii) Not tie off to any buoy.

(ix) Maintain at least twenty (20) feet of clearance if maneuvering between anchored vessels.

(x) Not nest or tie off to other vessels in that anchorage.

(xi) Not block access to designated emergency medical evacuation areas.

(xii) Based on COTP approval and direction, vessels commercially engaged in the collection and legal disposal of marine sewage may operate within spectator anchorages during the applicable periods.

(c) *Effective dates.* This section is effective from July 10, 2000 until July 16, 2000.

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS.

The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(G), 6.04–1, 6.04–6, and 160.5.

5. Add § 165.T01–191 to read as follows:

§ 165.T01–191 Safety Zone: Tall Ship Rally and Grand Parade of Sail, Broad Sound and Boston Harbor, Boston, MA.

(a) *Location.* The following are safety zones (all coordinates are NAD 1983): (1) All waters within a three hundred (300) yard radius of each vessel participating in the Grand Parade of Sail as it proceeds from approximate position 42°24′00″ N, 070°52′00″ W in Broad Sound, following the Boston North Channel and Boston Main Channel to various mooring sites throughout Boston Inner Harbor.

(2) All waters within a five hundred (500) yard radius from approximate position 42°23′06″ N, 070°53′26″ W; and

(3) All tall ship anchorages established in 33 CFR § 110.T01–135–191.

(b) *Applicable dates.* Paragraphs (a)(1) through (a)(3) of this section are applicable from 6 p.m. on July 10, 2000 until 6 p.m. on July 11, 2000.

(c) *Regulations.* The following regulation applies: Vessels, except those participating in the Grand Parade of Sail, and duly authorized patrol craft, may not transit the safety zone except as authorized by the Captain of the Port.

6. Add § 165.T01–192 to read as follows:

§ 165.T01–192 Safety Zone: Boston 2000 Fireworks Extravaganza, Boston Inner Harbor, Boston, MA.

(a) *Location.* The following is a safety zone: All waters within a four hundred (400) yard radius of Boston 2000 Fireworks Extravaganza barges and attending tug boats moored at approximate position 42°21′23″ N, 071°02′18″ W. All coordinates are NAD 1983.

(b) *Applicable date.* Paragraph (a) of this section is applicable from 8 p.m until 11 p.m. on July 15, 2000.

(c) Regulations. The following regulation applies:

Vessels may not transit through the safety zone unless authorized by the Captain of the Port.

7. Add § 165.T01–193 to read as follows:

§ 165.TO1–193 Safety Zone: Salute to USS CONSTITUTION Parade, Boston Harbor, Boston, MA.

(a) *Location.* The following are safety zones: (1) All waters within a three hundred (300) yard radius of the USS CONSTITUTION anchored at approximate position 42°20′24″ N, 071°58′14″ W.

(2) A moving safety zone within a three hundred (300) yard radius of all vessels participating in the Salute to the USS CONSTITUTION as they proceed from their various Boston Inner Harbor mooring sites transiting outbound using the Boston Main Channel and Boston North Channel to the Tall Ship 2000 Restart in Broad Sound established in 33 CFR 165.T01–194. The zone also includes all temporary spectator anchorages established in 33 CFR § 110.T01–135–191. All coordinates are NAD 1983.

(b) *Applicable date.* Paragraphs (a)(1) through (a)(3) of this section are applicable from 8 a.m. until 6 p.m. on July 16, 2000.

(c) *Regulations.* The following regulation applies: Vessels, except for those participating in the Salute to USS CONSTITUTION and duly authorized patrol craft, may not enter or remain in the safety zone except as authorized by the Captain of the Port.

8. Add § 165.T01–194 to read as follows:

§ 165.T01–194 Safety Zone: Tall Ships 2000 Race Restart, Massachusetts Bay, Boston, MA.

(a) *Location.* The following is a safety zone: All waters in a three (3) square mile area in Massachusetts Bay bounded as follows: Beginning at approximate position 42°27′12″ N, 070°40′00″ W; then running to approximate position 42°27′12″ N, 070°36′00″ W; then running to approximate position 42°24′06″ N, 070°36′00″ W; then running to approximate position 42°24′06″ N, 070°40′00″ W; and then running to the point of beginning. All coordinates are NAD 1983.

(b) *Applicable date.* Paragraph (a) of this section is applicable from 10 a.m. until 6 p.m. on July 16, 2000.

(c) *Regulations.* The following regulation applies: Vessels, except for those participating in the Tall Ships 2000 Race Restart, and duly authorized patrol craft, may not enter or remain in the safety zone from 10 a.m. to 6 p.m. except as authorized by the Captain of the Port.

9. Add § 165.T01–195 to read as follows:

§ 165.T01–195 Security Zone: USS JOHN F. KENNEDY, North Jetty, Boston Harbor, Boston, MA.

(a) *Location.* The following is a security zone: All waters of Boston inner harbor at the North Jetty, South Boston, bounded as follows: Beginning at approximate 42°20′53″ N, 071°01′34″ W; then running to 42°20′56″ N, 071°01′32″ W; along the western edge of Boston Harbor South Channel then running to 42°20′51″ N, 071°01′23″ W; then running to 42°20′49″ N, 071°01′24″ W; then running along the pier face to the point of beginning. All coordinates are NAD 1983.

Effective dates. This section is effective from July 10, 2000 through July 16, 2000.

(b) *Regulations.* The following regulation applies: Vessels may not enter the security zone unless authorized by the Captain of the Port.

Dated: June 6, 2000.

G.N. Naccara,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 00–15321 Filed 6–16–00; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD07–00–051]

RIN 2115–AE47

Drawbridge Operation Regulations: Atlantic Intracoastal Waterway, Miami, Dade County, FL

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule with requests for comments.

SUMMARY: Commander, Seventh Coast Guard is temporarily changing the regulations of the N.E. 163rd Street (SR 826) bridge at Sunny Isles across the Atlantic Intracoastal Waterway, mile 1078.0 in Miami, Florida, until July 31, 2000. This temporary rule allows the N.E. 163rd Street (SR 826) bridge at Sunny Isles to maintain the south bascule leaf in the down position with a two hour advance notification to the bridge tender to provide a double leaf opening until July 31, 2000. This is necessary to allow for repairs.

DATES: This temporary rule is effective from June 7, 2000 to July 31, 2000. Comments must be received by June 30, 2000.

ADDRESSES: Comments and materials received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CGD07–00–051] and are available for inspection or copying at Commander (obr), Seventh Coast Guard District, 909 S.E. 1st Avenue, Miami, Florida, between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Barry Dragon, Project Officer, Seventh Coast Guard District, Bridge Section, at (305) 415–6743.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. It was impracticable to publish an NPRM, because there was insufficient time remaining after we were notified of the dates of the repairs to follow normal rulemaking procedures.

Further, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. A delayed effective date is impracticable as repairs on the bridge are already underway.

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for the rulemaking [CGD07–00–051], indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received. We may change this rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the address under **ADDRESSES**, explaining why one would be beneficial. If the Coast Guard determines that a public meeting would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Discussion of the Rule

The N.E. 163rd Street (SR 826) bridge at Sunny Isles, mile 1078.0, across the Atlantic Intracoastal Waterway, has a vertical clearance of 36 feet at mean high water and a horizontal clearance of 90 feet between fenders. The existing operating regulations in 33 CFR 117.261(ll) require the bridge to open on signal; except that from 7 a.m. to 6 p.m. on Monday through Friday, except Federal holidays, and from 10 a.m. to 6 p.m. on Saturdays, Sundays, and Federal holidays, the draw need open only on the quarter-hour and three-quarter hour.

The Florida Department of Transportation notified the Coast Guard on April 12, 2000, that the repairs to the north bascule leaf was to be completed by April 22, 2000, and that repairs were to commence on the south leaf, which would require a temporary rule. This temporary rule will allow the south leaf of the N.E. 163rd Street (SR 826) bridge at Sunny Isles in Miami, Florida, to remain closed until July 31, 2000, unless two hours advance notification is provided to the bridge tender requesting a double-leaf opening.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. The Office of Management and Budget has not reviewed it under that order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040: February 26, 1979). The Coast Guard expects the economic impact of this rule to be minimal because of the limited duration of the rule, as well as the provision for double leaf openings with advance notice.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule will have a significant economic effect upon a substantial number of small entities. ''Small entities'' include small business, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities as the temporary rule will only delay a full opening of the drawbridge for a limited period of time.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–221), we offer to assist small entities in

understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. Small entities may contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding and participating in this rulemaking. We also have a point of contact for commenting on actions by employees of the Coast Guard. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children.

Environment

The Coast Guard has considered the environmental impact of this action and has determined under figure 2–1, paragraph 32(e) of Commandant Instruction M16475.1C, that this rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. From June 7, 2000 to July 31, 2000, § 117.261(ll) is suspended and a new paragraph (ss) is added to read as follows:

§ 117.261 Atlantic Intracoastal Wateray from St. Marys River to Key Largo.

* * * * *

N.E. 163rd Street (SR826) bridge, mile 1078.0 at Sunny Isles. The draw shall open on signal; except that, from 7 a.m. to 6 p.m. on Monday through Friday except Federal holidays, and from 10 a.m. to 6 p.m. on Saturdays, Sundays, and Federal holidays, the draw need open only on the quarter-hour and three-quarter hour. The south leaf may remain in the closed position unless two hours advance notice for a double leaf opening is provided to the bridge tender.

Dated: June 7, 2000.

T.W. Allen,

Rear Admiral, Commander, Seventh Coast Guard District.

[FR Doc. 00–15324 Filed 6–16–00; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Parts 5 and 13

RIN 1024–AC58

National Park System Units in Alaska; Denali National Park and Preserve, Special Regulations

AGENCY: National Park Service, (NPS), Interior.

ACTION: Final rule.

SUMMARY: For the portion of Denali National Park and Preserve formerly known as Mount McKinley National Park (the Old Park) only, this rule establishes a definition for ''traditional activities'' as the term is used in Alaska National Interest Lands Conservation Act (ANILCA) section 1110(a) and related Department of the Interior regulations. The rule also applies this definition and determines that, for the Old Park only, prior to the enactment of ANILCA, no traditional activities took place during periods of adequate snow cover for which snowmachines (snowmobiles) may now be used. In addition, the rule implements the June, 2000 Statement of Finding: Permanent Closure of the Former Mt. McKinley National Park Area of Denali National Park and Preserve To The Use of Snowmachines and determines that any snowmachine use in the Old Park would be detrimental to the resource values of the area. The rule also consolidates, expands and codifies certain designations, closures and permit requirements for Denali National Park and Preserve, including requirements for vehicular traffic, vehicle use limits, and public health and safety. The rule also replaces the out-of-date references to ''Mount McKinley National Park'' with the Alaska National Interest Lands Conservation Act name ''Denali National Park and Preserve.''

EFFECTIVE DATE: July 19, 2000.

ADDRESSES: Superintendent, Denali National Park and Preserve, PO Box 9, Denali National Park, AK 99755. Attention: Ken Kehrer, Jr.

FOR FURTHER INFORMATION CONTACT: Ken Kehrer, Jr. at the above address or by calling 907–683–2294.

SUPPLEMENTARY INFORMATION:

Background

As used in this Rule, the term ''Old Park'' means the portion of Denali National Park and Preserve that was formerly known as Mount McKinley National Park. This Rule incorporates

all the information in the Environmental Assessment for Permanent Closure Of the Former Mount McKinley National Park to Snowmachine Use, the Finding of No Significant Impact for the Proposed Permanent Closure of the Former Mount McKinley National Park to Snowmachine Use, the Statement of Finding: Permanent Closure of the Former Mt. McKinley National Park area of the Denali National Park and Preserve to the Use of Snowmachines and the Final Cost-Benefit analysis: Denali National Park and Preserve Special Regulations.

In 1903, United States Geological Survey geologist Alfred Brooks wrote: ''* * * the abundance of sheep, bear, moose and caribou found along the north slope of the Alaska Range rank it as one of the finest hunting grounds in North America.'' In 1917, to protect and preserve natural and scenic resources and for public enjoyment and recreation, Congress directed that Mount McKinley National Park ''shall be, and is hereby established as a game refuge.'' 39 Stat. 938. Congress expanded the Park in 1922 and 1932. Horace Albright, the National Park Service (NPS) Director, welcomed these additions, in part, as a means to better protect wildlife, particularly to improve protection of Dall sheep and moose in the Park by giving them additional winter range protection. House Committee on the Public Lands, Report 207, Letter of January 20, 1932.

In 1980, Congress passed the Alaska National Interest Lands Conservation Act (ANILCA), which enlarged Mount McKinley National Park and renamed it Denali National Park and Preserve (Pub. L. 96–487, Dec. 2, 1980, 94 Stat 2371). Consistent with the 1917 Act that created the Park, ANILCA recognized the importance of protecting habitat for, and populations of, fish and wildlife. The legislative history of ANILCA states that certain NPS units in Alaska, including ''Mount McKinley [National Park] * * * are intended to be large sanctuaries where fish and wildlife may roam freely, developing their social structures and evolving over long periods of time as nearly as possible without the changes that extensive human activities would cause.'' Sen. Rep. No. 96–413, 96th Cong., 1st Sess. 137 (1979); and, Cong. Rec. H10532 (Nov. 12, 1980). The heart of the Park and preserve lies on the lands that once comprised Mount McKinley National Park (the Old Park); there, on lands that ANILCA designated as Wilderness, predator-prey relationships have functioned for decades without significant human interference.

Under NPS management for the past 83 years, the wildlife and the wilderness have remained virtually unchanged. It is the human recreational element that has undergone a dramatic evolution. During the summer of 2000, the National Park Service (NPS) expects that over 400,000 people will visit the Old Park. Nevertheless, like Alfred Brooks, they will see an abundance of sheep, bear, moose and caribou, and the occasional wolf, against a spectacular backdrop of pristine, subarctic, alpine landscape—taiga and tundra, glaciers, glacier-fed rivers and cathedral peaks. The health of this shielded ecological system is also the cornerstone of a multimillion-dollar tourism industry in Alaska which is very dependent upon the presence of this diverse wildlife along the Denali road corridor.

Limiting motor vehicle use on the Denali Park Road, educating backcountry users and prohibiting snowmachine use in the Denali wilderness have been essential factors in maintaining the natural systems in the Park interior, and in providing continued outstanding visitor experiences; experiences that depend, in large part, on seeing the spectacular variety of wildlife along the Park road and the opportunity to observe natural predator-prey interactions. The wildlife populations in the Old Park are available for this unparalleled viewing opportunity precisely because they have been protected from intrusive interactions with humans for decades. Vehicle use of the road corridor beyond certain levels has been determined by NPS to displace the wildlife that can be seen from the road and otherwise disrupts the Park's ecosystems, thereby impairing the resources, values and purposes for which the Park was established.

During the difficult interior Alaska winters, any increase in stress on the wildlife through added energy expenditure or loss of preferred habitat is a concern. The braided river valleys and the high open tundra of the Old Park leave little opportunity for wildlife to avoid intrusions and take refuge. Any snowmachine use in the Old Park would result in detriment to the resource values of the Old Park and a significant change from the long-standing patterns of non-intrusive human interaction with wildlife. A major change in the level and extent of human activity in this historically undisturbed winter environment would be detrimental to many animals over a large area. The possibility of many additional miles of snowmachine trails and increased snowmachine activity levels throughout the Old Park threatens all types of habitat. This area of previously protected habitat is particularly vulnerable to increased disturbance given its proximity to access points along the George Parks Highway. In the long term, preserving the Old Park wilderness and its continually evolving natural processes is essential to ensuring opportunities for outstanding resource-based visitor experiences.

The historical limitations on motorized use have also created a unique wilderness recreation opportunity in Alaska. There is no other comparably sized, naturally regulated ecosystem in Alaska that has been as protected from motorized use during winter months. As a result, the resource values of solitude and natural quiet, which are the source of this opportunity, remain at exceptional levels during the winter and are enjoyed by skiers, mushers, snowshoers and winter campers.

The NPS Organic Act of 1916 directs NPS to manage National Parks and Monuments to ''* * * conserve the scenery and the natural and historic objects and the wildlife therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.'' 16 U.S.C. 1. ANILCA section 1110(a) provides that snowmachine use may be prohibited if such use would be detrimental to the resource values of the unit or area. Additional information upon which NPS relied is found in the June, 2000 Statement of Finding: Permanent Closure of the Former Mt. McKinley National Park Area of Denali National Park and Preserve To the Use of Snowmachines. In that Finding NPS concluded that any snowmachine use in the Old Park would be detrimental to the resource values of the area and that snowmachine usage for travel to and from villages and homesites and for traditional activities did not occur. That Finding is available from the superintendent or on the Denali National Park and Preserve web page at *www.nps.gov/dena.*

Administrative History of ANILCA Section 1110(a), Special Access for Snowmachines

National Park Service Rulemakings

On December 2, 1980, President Carter signed ANILCA into law. On January 2, 1981, NPS published a proposed rule (46 FR 5642). The purpose of the proposed rule was ''* * * to harmonize the statutory directives [of ANILCA] with existing [national monument] regulations

* * *'' and ''* * * to provide public guidance as soon as practicable.'' *Id.* According to the rule, expeditious rulemaking was needed to, among other reasons, address new directives in ANILCA such as section 1110(a) access. NPS regulations then in effect, generally prohibited aircraft and snowmachine use in Parks. *Id.* NPS described the proposed regulations as those minimally necessary to provide proper management in Park areas in Alaska and noted that further comprehensive rulemaking would follow. *Id.*

The proposed rule stated that: ''* * * [s]ections 13.10–13.12 would initially open all Park areas to access by snowmachine, aircraft and motorboat for any purpose.'' *Id.* at 5644. The proposal sought to reduce the need for persons to obtain individual access permits and distinguished between recreational uses and traditional activities:

> Sections 13.10–13.12 of these proposed regulations initially open all Park areas in Alaska to access by snowmachine (on areas with adequate snow cover or frozen rivers), motorboat, and aircraft, without the need for individual access permits. Access by these methods of transportation is authorized for any purpose (*e.g.* travel between villages, to a homesite, for mineral development, *for recreation, or for traditional activities except as is specifically provided for subsistence uses* in ss 13.45 and 13.46 discussed below under subsistence. Sections 13.10–13.12 implement section 1110(a) of the Alaska Lands Act which provides access for ''traditional activities * * * and for travel to and from villages and homesites.'' This approach extends the statutory concept to access for all purposes, except the special provisions concerning access for subsistence uses.''

Id., (emphasis added).

Under the corresponding access section for subsistence users (13.46), the proposal noted:

> At all times when not engaged in subsistence uses, local rural residents would be able to use snowmachines, motorboats, and other means of surface transportation [sic] in accordance with the appropriate Subpart A regulations. *For example, local rural residents engaged in recreational uses of snowmachines*, motorboats, and other means of surface transportation *would comply with the provisions of ss 13.10, 13.11, and 13.13*, respectively, and *local rural residents seeking otherwise-closed access to Inholdings or temporary access would comply with the provisions of ss 13.14 and 13.15*, respectively.

Id. at 5654, (emphasis added).

This explanation was repeated in the final rulemaking (46 FR 31836, 31852). It is instructive to note that, from the beginning, the authors of the rule distinguished recreational activities from traditional activities. On June 17, 1981, NPS published the final rule (46 FR 31836). The preamble to the rule also noted that:

> A substantial number of comments (203) objected to making these regulations applicable to all Park areas in Alaska (see ss 13.1(m), 13.2), including pre-ANILCA areas like the former Mt. McKinley National Park and Katmai and Glacier Bay National Monuments. The proposed regulations were viewed by these commentors as an unwarranted lessening of protective measure for these ''old'' Park areas.

Id. at 31837.

NPS concluded that there was no basis under the statutory language to exclude the Old Park from the conservation system units subject to section 1110(a).

NPS agreed with comments made that the findings required by Executive Order 11644 would not allow a general opening for snowmachine use—thus the final rule limited snowmachine use to the uses enumerated in section 1110(a), while allowing motorboats, airplanes and non-motorized surface transportation means to be used for any purpose. Executive Order 11644 requires that off-road vehicle use, including that of snowmachines, must be limited to specific areas and trails that: minimize damage to soils and vegetation; minimize harassment of wildlife or significant disruption of wildlife habitat; and minimize conflicts with, and danger to, other existing or proposed recreational uses. Furthermore, snowmachine use was not to be authorized in designated Wilderness Areas, and could be authorized in areas of the National Park system only if it would not adversely affect natural, aesthetic or scenic values. Consequently, the final rule authorized snowmachine use during periods of adequate snow cover or frozen river conditions only for traditional activities and village to village travel that were still permitted in park areas. The final rule provided two examples of uses that were not authorized, because the land use was no longer permitted in parks: snowmachine use to locate new mining claims and sport hunting. The rule also cautioned that ''* * * [p]rospective snowmachine users should note that the legislative history of section 1110(a) defines a traditional activity in terms of a use generally occurring in a park area prior to its designation. See S. Rep. No. 96–413, supra at 248; H. Rep. No. 96–97, Part 1, supra at 239.''

On April 6, 1983, NPS proposed regulations that would have effectively closed much of the Old Park to snowmachine and other motorized uses (48 FR 14978). The proposed rule noted that ''* * * [o]ne of the primary purposes for establishing Denali National Park and Preserve was to provide protection to certain species of wildlife and their habitats * * *'' ''Motorized use of certain areas of Denali National Park is believed to be detrimental to its ecosystem and the values for which it was established.'' *Id.* William P. Horn, then Deputy Under Secretary of the Interior announced the proposal by stating:

> The proposed regulations * * * would correct an oversight in the 1980 Alaska National Interest Lands Conservation Act (ANILCA). When Congress enacted Section 1110(a) of ANILCA it opened all units of the vastly expanded conservation system to snowmachine * * * use. Prior to ANILCA, the critical wildlife habitat and natural resource areas of [Mount McKinley were] essentially closed to motorized access. Congress inadvertently opened [Mount McKinley] to this kind of use. By re-establishing the historical public use restrictions, the National Park Service seeks to correct the action and restore the historical level of resource protection.

Department of the Interior, News Release, April 6, 1983.

The April 6,1983 proposal was never adopted in a final rule.

Department of the Interior Rule Making

On July 15, 1983, the Department of the Interior proposed regulations that would implement portions of ANILCA Title XI that had not been promulgated by any of the bureaus. The rule also proposed to repeal and replace the bureaus' various special access, temporary access and access to inholdings regulations, to codify all Title XI regulations in a single part. These regulations essentially mirrored NPS and U.S. Fish and Wildlife Service (FWS) regulations that generally tracked the language of ANILCA section 1110(a). The proposed rule would authorize snowmachine use during periods of adequate snow cover or frozen river conditions only for traditional activities that were still permitted in Park areas, and for travel to and from villages and homesites, pursuant to an access permit, and for subsistence purposes. The rule also proposed a definition for ''adequate snow cover.''

On September 4, 1986, the Department of the Interior published final regulations implementing ANILCA Title XI. Following the precedent established by NPS and FWS, the proposed regulations on motorboat, aircraft and nonmotorized surface transportation access were not restricted to traditional activities and travel to and from villages and homesites, as in the statutory authorization. In the final rule, the Department noted that EO 11644, regarding off-road vehicles (ORV), does

not apply to motorboats or aircraft. Therefore, the Department exercised its discretion under other applicable statutes in order to authorize airplane and motorboat use beyond that mandated in ANILCA. The fact that the Department did not limit airplane and motorboat access to only traditional activities under section 1110(a) demonstrates that traditional activities are a distinct subset of all the legally permissible activities that may occur in a Park area consistent with its enabling legislation.

The Department again also declined to endorse comments that supported a blanket exception from the provisions of 1110(a) for the parks and monuments that predated ANILCA.

> The argument is made that Congress did not intend to open the pre-ANILCA areas to the uses described in Section 1110(a), since these pre-ANILCA areas had been closed to such uses prior to the enactment of ANILCA. Interior does not find any *statutory* support for this position, since Section 1110(a) provides no exception for the pre-ANILCA areas. Accordingly, no exception for pre-ANILCA areas is provided for in these regulations.''

Id. (emphasis added).

While the statutory language must be read to apply to the Old Park, NPS and the Department continue to believe that the Department's 1983 characterization is correct, and that inclusion of the Old Park was inadvertent.

The Department also declined to accept comments to define ''traditional activities,'' even though, under the regulations, snowmachines are limited to use for traditional activities and travel to and from villages and homesites. The Department noted that: ''* * * [o]ne suggestion was made that *the regulations should limit access to traditional activities to the means traditionally employed,* and should define what those means are.'' Id. at 31626, (emphasis added). The Department chose to neither reject nor accept this suggestion. Instead the Department stated that:

> Because these regulations apply to a number of areas under the administrative jurisdiction of three agencies, it has been decided that it would be unwise, and perhaps impossible to develop a definition that would be appropriate for all areas under all circumstances. Exactly what ''traditional activities'' are must be decided on a case-by-case basis. Once the agencies have had the opportunity to review this question for each area under their administration, it may be possible to specifically define ''traditional activity'' for each area. Accordingly, these regulations do not contain a definition of ''traditional activity.''

Id.

Denali National Park and Preserve 1986 General Management Plan

In the 1986 General Management Plan (GMP) for Denali National Park and Preserve, NPS followed the suggestion in the 1986 regulations for the development of area specific definitions of ''traditional activity'' (GMP, page 195). The GMP also indicated that recreational snowmachining can be treated as either a means of access or as a distinct activity in and of itself. The GMP identified recreational snowmachining as a distinct activity that needed to be evaluated against the definition of traditional that was provided in the GMP in order to determine if it was a traditional activity within the Old Park (GMP, page 37). This definition was not incorporated into regulation, but the Old Park was closed for 19 years to this activity by way of Superintendent's Orders (Compendium) based on an interpretation that recreational snowmachining was not a traditional activity in the Old Park.

Denali National Park and Preserve: 2000 Final Rule

Under Section 1110(a) of ANILCA, snowmachines may be used in conservation system units for traditional activities, unless a particular traditional activity is barred by ANILCA or other applicable law, and for travel to and from villages and homesites. The use of snowmachines for such purposes may not be prohibited unless, after notice and hearing in the vicinity of the affected unit, it is determined that such use ''would be detrimental to the resource values'' of the unit.

There are no villages, homesites and other valid occupancies within the Old Park. Access by snowmachine through the Old Park in transit to homesites, villages and other valid occupancies did not lawfully occur prior to ANILCA and is available through routes outside the Old Park that have been historically used for that purpose, both prior to and since the enactment of ANILCA. Thus, no snowmachine use within the Old Park is authorized by Section 1110(a) or 43 CFR 36.11(c) for travel to and from villages, homesites and other occupancies.

Consumptive use as stated in the final rule definition of ''traditional activity'' was derived by the Department after careful review of the legislative history of ANILCA. The four specific examples found in that history are sport hunting, fishing, trapping and berry picking. In the context of the proposed rule, NPS requested specific information on other activities which the public felt might be traditional activities. Based on its review of the comments, NPS has not identified any other consumptive activities in the Old Park which are traditional activities under the adopted definition.

The definition of traditional activities in this final rule differs from the November 12,1999 proposed rule definition in two main ways. First, the application of the final rule definition is limited. The final rule definition is for the Old Park only, while the proposed definition was a general definition that would have applied to all the NPS units in Alaska. This is because the public comments indicated there was some confusion over the applicability of the definition to other than the Old Park. NPS also believes that further consideration of the definition in the context of the other park areas in Alaska is needed before a definition applicable to them is promulgated due to the possibility of different historical use patterns in those areas.

Second, the final rule definition is now clearer about what NPS considers to be traditional activities in the Old Park. The revised definition clearly states that traditional activities are related to consumptive use, and that recreational snowmobiling is not a traditional activity in the Old Park. These changes are described in further detail below. Because the meaning of the phrase ''utilitarian Alaska lifestyle'' was not clear to many commentators we have replaced it with language which we believe accomplishes the same purpose, but defines the term traditional activity in a manner that is more readily understood by the public.

The November 12,1999 proposed rule suggested the following definition of a traditional activity for NPS units in Alaska: An activity that generally and lawfully occurred in a unit or a geographically defined area of a unit prior to enactment of ANILCA, and that was typically associated with that region as an integral and established part of a utilitarian Alaska lifestyle or cultural pattern.

This final rule adopts the following definition of a traditional activity for the former Mount McKinley National Park portion of Denali National Park and Preserve:

> An activity that generally and lawfully occurred in the Old Park contemporaneously with the enactment of ANILCA, and that was associated with the Old Park, or a discrete portion thereof, involving the consumptive use of one or more natural resources of the Old Park such as hunting, trapping, fishing, berry picking or similar activities. Recreational use of snowmachines was not a traditional activity. If a traditional activity

generally occurred only in a particular area of the Old Park, it would be considered a traditional activity only in the area where it had previously occurred. In addition, a traditional activity must be a legally permissible activity in the Old Park.

As a general definition for all NPS units in Alaska, and under which an area-by-area analysis would be done, the proposed definition of traditional activities generally received widespread support. However, in reviewing the public comment, NPS realized that the proposed definition was not entirely clear; accordingly, NPS has made several clarifying changes in the final definition. To produce a more understandable definition, the description ''involving the consumptive use of one or more natural resources of the Old Park such as hunting, trapping, fishing, berry picking or similar activities'' has been added consistent with the legislative history which uses these examples of traditional activities for purposes of section 1110(a). This consumptive use is part of a life style or cultural pattern that remain practical and essential components of subarctic life. Clarification that the recreational uses of snowmachines (such as picnicking, sightseeing, wildlife viewing, photography and camping) were not traditional activities in the Old Park has been added. Although non-snowmobile based recreational activities did take place in the Old Park these activities were not the type of activities offered during the Congressional deliberations as the traditional activities to be preserved. Clarification that a traditional activity that only took place in a portion of the Old Park is a traditional activity only in the area where it generally occurred has also been added. After analysis and consideration of the public comments, NPS has decided to define and apply this definition only to the Old Park at this time. NPS intends to define traditional activities and apply such definitions to other park areas, including the remainder of Denali National Park and Preserve, in subsequent processes, such as future rulemakings to implement backcountry management plans for some of the national parks in Alaska.

NPS emphasizes that the definition of traditional activities in this rule is applicable to the Old Park only. NPS could develop and apply a different definition of traditional activities for the remainder of Denali National Park and Preserve and other Alaska Parks, based on historical use patterns for those areas. While NPS has found that certain activities did not occur in the Old Park during periods of adequate snow cover, and has developed and applied in this rule the definition of traditional activities for that area only, NPS could find differently for other NPS areas. NPS notes that the use of the Old Park may be distinct as compared to the ANILCA established portions of the Alaska Park units, due to the use restrictions that have been historically applied to the Old Park.

NPS has previously provided separately for snowmachine use for subsistence activities under 36 CFR 13.46, but subsistence is not authorized in the Old Park.

Applying this park specific definition to the Old Park, NPS is unable to identify any traditional activities or travel to and from villages, homesites and other valid occupancies during periods of adequate snow cover. In response to the request for comments regarding the identification of traditional activities within the Old Park, NPS received no comments that identified a history of any traditional activities as defined in this rule legally taking place contemporaneous with the enactment of ANILCA. The NPS has additionally concluded that any snowmachine use in the Old Park would be detrimental to the resource values of the area. Accordingly, NPS has inserted in the regulations for the Old Park only, that snowmachine use is not permitted for any reason within the Old Park portions of Denali National Park and Preserve.

The legislative history of ANILCA contains several examples of traditional activities: sport hunting; fishing; berry picking; trapping. The House and Senate Committee Reports that accompany ANILCA list the first three of these activities as examples of traditional activities. Trapping was discussed as a traditional activity during Senate mark-up. The Committee Reports state that if traditional uses were generally occurring in an area prior to its designation the uses shall be allowed to continue. NPS notes that hunting, fishing, berry picking and trapping share a common characteristic; they are all consumptive, resource gathering activities. Congress sought to specially protect access for these activities (where the activities were authorized by ANILCA or other law) within areas that were being created to protect natural resources. Section 1110(a) was drafted to address Congressional concern that many Alaskans who practiced these kinds of activities would not qualify as subsistence users under Title VIII and therefore would not qualify for snowmachine access under section 811(b). Section 1110(a) was adopted to provide similar access for consumptive activities to these non-qualifying members of the public.

With respect to the Old Park, NPS is certain that Congress did not expressly intend and did not create, an exception to the Wilderness Act that would allow snowmachines in wilderness areas—because someone on the snowmachine intended to look around, or happened to be carrying a sandwich or disposable camera—or because non-motorized sightseeing, picnicking and photography were permissible in the Old Park prior to ANILCA. If a contrary interpretation were correct, Congress need not have linked snowmobile access to traditional activities, but would have allowed it for any purpose since virtually any use of the Park entails an element of sightseeing. Such an interpretation would render the term ''traditional activities'' as the equivalent of ''for any purpose''. NPS has found no evidence of such intent in the legislative history.

The Senate Committee on Energy and Natural Resource mark-up sessions that were the origin of this section, and the Committee Reports on the Act consistently reference traditional hunting, fishing and berry picking. Congress did not identify other activities, such as recreational activities, in deliberations on section 1110(a). Conversely Congress made its intent clear in other provisions of ANILCA, specifically opening conservation system units to recreation by authorizing such access specifically, and separately from access for traditional activities. See *e.g.,* section 201(2) Bering Land Bridge National Preserve (''in a manner consistent with the foregoing [the preserve shall be managed] for public access for recreational purposes to the Serpentine Hot Springs area.''); section 202(5) Kenai Fjords National Park (''the Secretary is authorized to develop access to the Harding Icefield and to allow use of mechanized equipment on the Icefield for recreation.''); section 202(6) Kobuk Valley National Park (''the Secretary shall permit aircraft to continue to land at sites in the upper Salmon River watershed.'') and section 202(10) Yukon-Charley Rivers National Preserve (''the Secretary shall permit aircraft to land on sites in the upper Charley River watershed'').

With respect to the authorization of landing sites in the upper Salmon and Charley River watersheds, amendments approved at the October 10, 1979 Senate Committee on Energy and Natural Resources mark-up struck the phrase ''traditionally used for such purposes'' from the end of each sentence. The amendments put a period after the word ''watershed''. The accompanying mark-

up colloquy explains the Committee's intent to authorize access beyond where and what was traditional in these two areas due to their high potential for compatible recreational use.

As the Alaska Conservation Foundation commented:

> [T]he only mention of recreational use in the ''Purposes'' section of ANILCA states that the intent of Congress was ''to preserve *wilderness* resource values *and related* recreational opportunities including but not limited to hiking, canoeing, fishing and sport hunting.'' Unquestionably, recreational snowmachining is not a recreational opportunity that related to wilderness resource values. (Section 101(b)). The other purposes outlined in Section 101 are either antithetical to recreational snowmachining or are in no way supportive of recreational snowmachining.
>
> With respect to Section 1110(a) and the term ''traditional activities'', first and foremost, it is instructive to consider the explanatory title for the section, which is ''*Special* Access and Access to Inholdings.'' Congress expected this section to only apply to ''special'' access situations—which are, by definition ''distinguished by some unusual quality, being other than the usual.'' Therefore, Congress limited access to these areas, allowing intrusions only for ''traditional activities'' or for access to homesites and villages.

NPS also notes that due to the distance that may be traveled by modern snowmachines and the resulting noise impacts, even only a few snowmachines would cause detriment to the special resource values of the Old Park, in particular the wilderness and wildlife values of the Old Park. These values have developed over time as a result of the unique management history of the area, and are therefore coincident with the boundaries of that former unit. *See Statement of Finding*, June, 2000.

Summary and Analysis of Public Comment on Snowmachine Issues

Summary of Comments

ANILCA section 1110(a) and 43 CFR 36.11(h) require notice and hearing(s) in the vicinity of the area(s) directly affected by such closures. NPS provided notice of the hearings in a press release that was mailed to approximately 450 Alaskans and businesses in the Anchorage-Fairbanks rail-belt. The press release was posted on Denali's website and faxed directly to 31 community, local and national news organizations, including print, radio and television in mid-November 1999. The press release was published in the Fairbanks Daily News-Miner, Anchorage Daily News, Valley Sun and Mat-Su Frontiersman. Two follow-up press releases were also faxed to the 31 news organizations and were published in the Fairbanks and Anchorage newspapers. NPS also placed newspaper advertisements in Fairbanks and Anchorage newspapers to inform the public of the purpose for, and the times, dates and locations of, the hearings. Alaska's congressional delegation was also informed. Four public meetings were held from December 6, 1999, to December 9, 1999, in McKinley Village, Talkeetna, Fairbanks and Anchorage. Comments on the proposed rule were originally due by Jan. 11, 2000, but were subsequently extended until Jan. 25, 2000. Public discussion of the proposal was extensive, with many articles, editorials, and opinion pieces published, as well as television and radio coverage broadcast.

At the public meetings: 81 people testified in favor of closing the Old Park to snowmachine use, and 44 people testified against the proposed closure; 34 speakers voiced support for the proposed definition of traditional activities, and 11 spoke against it. Including written comments, approximately 6,039 timely comments were received on the November 12, 1999 proposed rulemaking. Some commentors sent comments by both conventional and electronic mail. NPS attempted to match such duplicate mailings and count them as one. Additionally, many comments were signed by more than one person—particularly comments that supported the proposed rule. NPS acknowledges this point, but for this rulemaking, chose to count a letter or post card as a single comment, regardless of the number of signatures. The numbers shown in parentheses are the portions of the totals that were received from Alaska residents.

Total Comments—6039
(2334, 39% of responses are from Alaskans)
Supporting Closure—5784 (96% of total response on this issue)
(2105, 91% of Alaskans on this issue)
Opposed to Closure—226 (4% of total response on this issue)
(201, 9% of Alaskans on this issue)

NPS proposed Definition of Traditional Activities.

Supporting comments—3176 (98% of total response on this issue)
(1215, 96% of Alaskans on this issue)
Opposing comments—68 (2% of total response on this issue)
(57, 4% of Alaskans on this issue)

Many commentors on both sides of the issue identified themselves as snowmachine owners. Quite a few commentors wrote of the detrimental effects snowmachines have had on Yellowstone National Park and urged NPS to protect Denali from similar impacts. The comments NPS received concerning the superintendent's determination of adequate snow cover supported this provision.

Response to Public Comment

Comment: The State of Alaska, Office of the Governor commented that it would support selected snowmachine closures in Denali National Park if NPS agrees to meet additional procedural steps such as a management regime less restrictive then a total closure. Other commentors simply disagree with the NPS assertion that any snowmachine use in the Old Park would be detrimental due to the unique values of the area. They suggest that just by the act of allowing snowmachine use into wilderness areas in Alaska, Congress was acknowledging that some impact was acceptable and therefore cannot be considered detrimental for the purposes of regulating use. The State suggests that in determining what would be detrimental to the resource values of the Park, NPS should be ''focusing greater attention on the intrinsic values of the unit, which are becoming increasingly important to the public.''

NPS response: NPS agrees that in many cases the limited snowmachine use envisioned by Congress in ANILCA for traditional activities may not represent a significant change or a significant threat to the resource values of much of the previously unreserved federal lands that were used to create new Parks and wilderness areas. This is because snowmachine use had been occurring on many of those lands before their establishment as new conservation system units by ANILCA. Use of snowmachines for traditional activities, subsistence activities and village to village travel was the status quo condition in many of these areas.

However in the Old Park, essentially the area that is now the Denali Wilderness, it is dramatically different. McKinley was Alaska'a only national park prior to ANILCA, and as a result it has a very special set of resource values that have developed since 1917, through protective management. The health of this shielded ecological system is the park's most intrinsic value. It is the foundation for one of the world's finest wildlife viewing opportunities. The possibility of seeing in a single day, bears, wolves, caribou, moose, Dall sheep, and other animals against the backdrop of a spectacular subarctic, alpine landscape and vegetation is the cornerstone of a multimillion-dollar tourism industry in Alaska. Wildlife populations within the historical boundaries of the Old Park are available for unparalleled viewing opportunity

precisely because they have been protected for decades from intrusive interactions with humans. The opportunity to see natural predator-prey interactions is one of the primary visitor attractions at Denali National Park and Preserve.

Another important long-term value of this area is the possibility of recording and gaining understanding of a naturally functioning subarctic system with minimal disturbance by people. This largely undisturbed core area is regularly referred to as a comparison site in scientific studies throughout the circumpolar region. Denali National Park and Preserve has been designated an International Biosphere Reserve for its unique scientific values and the presence of the protected core area. The area defined by the boundaries of the Old Park is recognized as a distinct area in the reserve unit because of its different management history. It has also been selected for long-term ecological monitoring by NPS and other federal agencies because of its historic level of protection and ecological integrity.

Section 701 of ANILCA designated about 95 per cent of the Old Park as the Denali Wilderness. The boundaries of the Old Park are essentially now the boundaries of the Denali Wilderness. This area provides a unique wilderness recreation opportunity in Alaska. There is no other large, naturally regulated ecosystem in the entire 375 million acres of Alaska that is as free from motorized use in the winter months. As a result, the fundamental wilderness resource values of solitude, natural quiet and extensive untracked vistas, which are the source of this opportunity, remain at exceptional levels during winter. This area provides a unique opportunity to those members of the public who seek to exercise their ''quiet rights.'' No other area with such special qualities is readily available or adjacent to the road system of Alaska.

Given this unique situation in the public lands of Alaska, the NPS believes it is justified in its finding that the introduction of any snowmachine use into the Old Park represents a fundamental change to the condition of the unique resource values of the area. This shift from no use to the levels of use that are now possible with modern technology is completely different from the continuation of pre-existing types and levels of use that Congress envisioned when it moved to protect access for resource gathering related activities associated with an ongoing Alaska lifestyle. Any snowmachine use in the Old Park is a fundamental change; and therefore, such use alone would have a significant, detrimental effect on resource values. (*See* Statement of Finding, June, 2000.)

Furthermore, when enacting ANILCA in 1980, Congress did not envision that snowmachines would carry large numbers of people into the backcountry. Nor did the framers of ANILCA envision the potential for resource harm that is now possible due to the dramatic increases in snowmachine use caused by technological advances, increases in urban population and increased expendable income.

Comment: Several commentors, including the Alaska State Legislature, suggested that, as proposed, the definition of a traditional activities requires that a utilitarian activity must have a cultural component to qualify as traditional. The Legislature also objected to the requirement that a qualifying activity must have been an integral and established part of a utilitarian Alaska lifestyle or cultural pattern. Other commentors, including the State of Alaska, Office of the Governor, pointed out that the statute does not require such a showing and joined in that objection.

NPS response: Based on the comments submitted, NPS realized that the reference to ''utilitarian Alaska lifestyle'' was not well understood by the commentors. Accordingly, NPS has modified the final definition and eliminated this phrase to more clearly describe the activities falling within section 1110(a).

Comment: Many of the same commentors felt that the definition of traditional activities should have been written more broadly to include activities that these commentors generally concede are recreational in nature, such as sightseeing, picnicking, wildlife viewing, camping and photography. These commentors insist that if these activities generally occurred in the Old Park prior to ANILCA, they are ''traditional activities.'' Most commentors, however, strongly disagreed with this approach; they felt that NPS had correctly identified ''traditional activities'' as activities that are necessarily connected with a generally rural—and from the Alaska perspective, generally unique—Alaska lifestyle or Alaska culture.

NPS response: NPS notes that it is rare that people visit National Parks, especially an Alaska Park like Denali, without sightseeing. It's also our experience that visitors often carry a camera and bring something to eat. NPS also notes that many visitors to Alaska go sightseeing, take pictures and eat take-out food in downtown Anchorage. NPS finds no specific reference in ANILCA or its legislative history that indicates that Congress intended to include any recreational activities under section 1110(a). With respect to the Old Park, NPS is certain that Congress did not expressly intend and did not create, an exception to the Wilderness Act that would allow snowmachines in wilderness areas—because someone on the snowmachine intended to look around, or happened to be carrying a sandwich or disposable camera—or because non-motorized sightseeing, picnicking and photography were permissible in the Old Park prior to ANILCA. If a contrary interpretation were correct, Congress need not have linked snowmobile access to traditional activities, but would have allowed it for any purpose since virtually any use of the Park entails an element of sightseeing. Such an interpretation would render the term ''traditional activities'' as the equivalent of ''for any purpose''. NPS has found no evidence of such intent in the legislative history.

Comment: Building on its analysis of what should qualify as traditional activities, the Alaska Governor's Office contends that NPS cannot justify a post-ANILCA snowmachine closure in the Old Park on the fact that snowmachines were prohibited there pre-ANILCA. The proper analysis, the Governor suggests, is whether traditional activities were conducted in the Park prior to ANILCA, not whether snowmachines were used there. The Alaska Outdoor Council made a similar comment. The Wilderness Society, the Trustees for Alaska and numerous other commentors, on the other hand, argue that ANILCA must be interpreted to prohibit any snowmachine use in the Old Park regardless of how traditional activities are defined. They believe there having been no use in the Old Park prior to ANILCA, there can be none after ANILCA. In a recent court decision, *ASSA* v. *Babbitt,* A99–59 CV (JWS), the United States District Court, District of Alaska, agreed with the Wilderness Society that the statutory language of ANILCA does not foreclose the interpretation that they suggest.

NPS response: NPS first notes that it has conducted, with this rule's definition, an analysis of whether traditional activities occurred in the Old Park in the manner suggested by the Governor. For reasons that are explained in this preamble, NPS cannot identify any traditional activities that generally occurred in the Old Park prior to ANILCA, for which a snowmachine could be now used during periods of adequate snow cover. Prior to ANILCA, park regulations prohibited such traditional Alaska activities as hunting

and trapping in the Old Park; those activities are still prohibited. Other subsistence activities have never been authorized and despite our request for comments, we can find no evidence that fishing or berry picking took place during periods of adequate snow cover contemporaneous with the enactment of ANILCA. There are no villages or homesites in the Old Park, and villages and homesites to the west or north of the Old Park have been commonly and more easily reached by a flatter, more northern route.

NPS has, however, reviewed the comments of the Wilderness Society and the legislative history of ANILCA that they submitted with their comments. NPS has also reviewed similar comments and legislative history submitted by the Trustees for Alaska on behalf of a number of conservation groups. NPS also conducted its own review of ANILCA's legislative history, prior rulemaking and interpretive case law. ANILCA does not define the term ''traditional activities''. The relevant Committee Report explanation from the Senate is itself ambiguous:

> The Committee recommends that traditional uses be allowed to continue in those areas where such activities are allowed. This is not a wilderness type of pre-existing use test. Rather, if uses were generally occurring in the area prior to its designation, those uses shall be allowed to continue and no proof of pre-existing use will be required.

Report of the Senate Committee on Energy and Natural Resources, Report No. 96–413, p. 248.

While the statute itself addresses the use of snowmachines for traditional activities, the Committee Report speaks in terms of continuing ''traditional uses''. Although Congress did not define the term ''traditional activities'', the Department has determined that Congress intended to allow traditional activities to continue where they were taking place prior to the enactment of ANILCA. The report only identifies hunting, fishing and berry picking as traditional activities. In view of its ambiguity, ANILCA has left it to the Secretary to define this term.

ANILCA section 1110(a), as enacted, was derived from section 1110(a) of the Senate Committee's reported version of the bill. S. Rep. No. 413, 96th Cong. 1st Sess. (1979). In exercising the Secretary's discretion to define this term, we have attempted to review all potentially relevant information. In this regard, NPS believes the Senate Committee on Energy and Natural Resources mark-up sessions on August 1 and 8, 1978, are informative of the concerns expressed even though they do not represent binding legislative history. The mark-up colloquies reveal that, in consideration of the large size of the new conservation system units and the remoteness of rural Alaska, Congress carefully fashioned an exception to the 1964 Wilderness Act in ANILCA section 1110(a). Motorized access for specific traditional activities, where they were generally occurring, was allowed to continue in Alaska wilderness because Congress recognized that continued access for these activities was necessary to sustain the Alaska lifestyle. Where snowmachines were being used for such things as hunting or trapping, or service functions such as hauling freight to villages, snowmachine use for these purposes would continue regardless of wilderness designations. Congress understood that where access for these activities was ongoing, it supported Alaskan lives and defined Alaskan identity. However, there is no suggestion in ANILCA or its legislative history that Congress intended to authorize new snowmachine use in the Old Park, which ANILCA designated as wilderness, when there had been no authorized snowmachine use there prior to ANILCA (for any activities). Indeed the legislative history shows that Congress intended to tailor this authorization narrowly. (Senate Energy and Natural Resources Committee Alaska (d)(2) Lands—Mark-up, August 1, 1978, pages 47–74). The August 8th discussion focused particularly on authorizing mechanized use where it had been done in the past. In order to prohibit a traditional use of this type of vehicle or mechanized equipment in a wilderness area the land manager must find that it would cause damage. (Senate Energy and Natural Resources Committee Alaska (d)(2) Lands—Mark-up, August 8, 1978, pages 10–14, 49–50, 60–64).

Comment: Some commentors thought NPS should ban all recreational uses of snowmachines from all of Denali National Park and Preserve. Others thought NPS should be able to accommodate some recreational use in areas other than the Old Park.

NPS response: Unlike the proposed rule, the final definition adopted here applies only to the Old Park. NPS intends to use park planning processes, particularly the backcountry management planning process for the Denali addition areas and other park units, in developing and applying the definitions of ''traditional activities'' outside the Old Park. Although NPS makes no decision at this time on such definitions, based on its present review of the statute and its legislative history, NPS believes that such future processes could conclude that recreational activities independent of the types of activities discussed in this preamble are not traditional activities for purposes of section 1110(a) in these other areas. NPS intends nevertheless to examine, as part of these planning processes, where snowmobile use for recreational activities then determined to be outside the scope of section 1110(a) could be appropriate within individual park units, consistent with the applicable statutes and Executive Orders pertaining to the National Park System in Alaska.

Comment: A few commentors suggested that the definition of traditional activities will have major impacts on other forms of access such as sightseeing flights that want to land on NPS lands.

NPS response: The definition of traditional activities adopted by this rule does not have the broad effect described by some. The Department's 1986 regulations went beyond the scope of section 1110(a) and, based on other statutory authorities, authorized the non-commercial use of motorboats and airplanes in all DOI areas without regard to the purpose. 43 CFR 36.11(d) & (f). That extended authorization not only remains unchanged, but the definition adopted here applies solely to snowmachines in the Old Park. This rulemaking has no effect on access by means other than by snowmachines. Commercial activities, including sightseeing landings, have been and will continue to be, regulated under NPS concessions authority.

Comment: The Alaska State Legislature and Territorial Sportsmen Inc. commented that the proposed definition of traditional activities is a major regulatory departure by NPS.

NPS response: NPS has consistently managed the two-million-acre Old Park as closed to snowmachine use and open for nonmotorized winter recreation in a way that allows visitors to experience solitude and natural sounds, such as dog mushing, snowshoeing, and cross-country skiing. Pre-ANILCA regulations and policy prohibited snowmachine use. As early as 1981, in the implementing regulations to ANILCA, NPS cautioned ''[p]rospective snowmachine users [to] note that the legislative history of section 1110(a) defines traditional activities in terms of a use generally occurring in a Park area prior to its designation.'' 46 FR 3184, June 17, 1981. Based on this interpretation, every post-ANILCA superintendent closed the Park to snowmachine use through a compendium order since snowmachine use had not lawfully occurred in the Old Park contemporaneous with the enactment of ANILCA.

Interpreting the term ''traditional activities'' so as to distinguish recreational snowmachining from it, as a distinct activity in and of itself, was presented to the public in the Park's 1986 GMP. Then, as now, the public strongly supported such a distinction. Consequently, the definition adopted by this rule does not represent a change in the public understanding of the implementation of ANILCA section 1110(a) relative to the Old Park. Nor does it alter the actual patterns of use that are currently occurring in the Old Park. Since Congress did not define the term ''traditional activities'' the NPS has done so within its discretion.

Comment: Three commentors suggested that this closure would discriminate against persons with disabilities because it would limit their access to the Old Park.

NPS response: The decision treats all potential users equally in that snowmachine use is prohibited for everyone in the Old Park. Additionally, as noted above, NPS has determined that any snowmachine use would be detrimental to the resource values of the Old Park. The commercial dog sled companies that operate in the Old Park have expressed a willingness to take any interested individuals, including those with disabilities, into the Old Park.

Summary and Analysis of Public Comment on Other Issues

Comments and Responses on Regulations Affecting Management of the Denali National Park Road

Background

This regulation is the culmination of several years of planning and public involvement on managing the Denali National Park Road. Detailed direction for managing the road was outlined in the Draft Entrance Area and Road Corridor Development Concept Plan and Environmental Impact Statement that was available for public review between June 21 and August 19, 1996. This draft plan was based on the recommendations of the Denali Task Force, a committee formed at the request of the Secretary of the Interior in 1994, on proposals received during public scoping during 1995, on previous plans, and on planning team work and impact analysis. NPS management proposals affecting the Park road received widespread support during the public comment period. The final plan was distributed in early 1997, and elements of the plan calling for safety improvements on the road and for replacing some private vehicles with buses were implemented beginning later that year. The additional bus trips provided for in the plan-without increasing the overall number of vehicles-resulted in more people having the opportunity to travel into the Park interior. The specific vehicle allocations outlined in the proposed regulations were also evaluated in the 1996 draft Entrance Area and Road Corridor Development Concept Plan and published in the final plan as part of the ''Road Management'' section. The need for regulations for management of the Park road is listed as the first item under provisions affecting general vehicle traffic. NPS kept the public informed of actions to implement the plan and progress on the regulations through press releases and newsletters. The concept of restricted vehicle access on the Denali National Park road has been supported by the public since it was started in 1972. The overall traffic limit on the park road, 10,512 vehicle trips during the summer allocation season, was evaluated as part of the 1986 General Management Plan, which included public review and comment. Public support for the road management provisions in the draft Development Concept Plan was expressed during studies along the park road and in unsolicited visitor comments. Those who commented on the road regulations during late 1999 and early 2000 demonstrated even greater support. Of the 6,039 comments received on the proposed regulations, 382 addressed management of the Denali National Park Road. Of these 382 comments, 368 were in favor of the road regulations as proposed and 7 were opposed to the regulations as proposed. Another 7 comments were generally in favor of restrictions on road use but expressed a preference for other methods than those in the proposed regulations. Public involvement and continued planning for management of the park road indicate that the road regulations are long overdue. These regulations are consistent with ANILCA, and all decisions have been made with full participation of the public, above and beyond the requirements of ANILCA and the National Environmental Policy Act.

Comment: The State of Alaska and one individual commented that ANILCA does not allow for the regulation of the Park road as proposed.

NPS response: ANILCA does provide for the reasonable regulation included in the final rule. See section 1110(b) of ANILCA (16 U.S.C. 3171(b)): ''Such rights shall be subject to reasonable regulations issued by the Secretary to protect the natural and other values of such lands.'' The permit system identified in the regulation affords the superintendent the flexibility to accommodate the access allowances in ANILCA while managing the Park pursuant to the NPS Organic Act and other applicable authorities. The 1997 Entrance Area and Road Corridor Development Concept Plan identified methods to increase the numbers of visitors to the core of Denali National Park. These provisions have been implemented and the overall number of visitors has increased as a result.

Comment: One individual noted that in his view the proposed regulations are confusing, the process is misleading, public comment was inadequate and Kantishna landowners and stakeholders were not provided adequate notice.

NPS response: The proposed regulations affecting road use in Denali National Park followed two previous planning processes involving the public, the General Management Plan in 1986 and the 1997 Entrance Area and Road Corridor Development Concept Plan. Public notice of the 1997 plan was widely published. The plan specifically addressed the promulgation of special regulations for management of the Park road, establishing the GMP limit of 10,512 vehicle trips during the allocation season in regulation, setting formal ''Rules of the Road,'' and setting a seasonal allocation limit for Kantishna business traffic.

Several Kantishna landowners and lodge operators commented on the 1997 Development Concept Plan. The Park also produced a strategic plan that included the need for special regulations. The 1997 Strategic Plan includes the following long-term goal on page 20: ''By 2002, regulations affecting road use and snowmachine use are implemented and enforced.''

The National Park Service has continued meeting with individuals and groups interested in the process and has kept the public informed through newsletters and press releases. Newsletters discussing implementation of the 1997 development concept plan and the need for road regulations were distributed to the public twice during 1996, twice during 1997, once during 1998, twice during 1999, and once in early 2000. Four press releases on the issue were sent to the media, and information has been available on the Park's web site since early 1997.

Comment: One individual commented that the proposed regulations will deny people the opportunity to visit their Park.

NPS response: The National Park Service disagrees. The 1997 Entrance Area and Road Corridor Development Concept Plan identified methods to increase the numbers of visitors to the

core of Denali National Park. These provisions have been implemented during the past three seasons, and the overall number of visitors has increased as a result. The 1997 plan and accompanying environmental impact statement also outlined resource protection needs and the need for the proposed regulations.

Comment: A few individuals and one mining company commented that they saw no reason to limit traffic on the Park road. They proposed that safety concerns could be resolved through road improvements and constructing an additional access route into the Park from the north creating a one-way loop.

NPS response: The NPS considered these issues in the 1997 Entrance Area and Road Corridor Development Concept Plan and the 1997 North Access Feasibility Study. The 1997 development concept plan provides for improvements to the existing road to address safety issues and for increasing the numbers of visitors traveling into the interior of the park.

The North Access Feasibility Study determined that a new north access route, either road or rail, would be feasible, but notes that much more study and planning is needed. As stated in the opening paragraph, the 1997 study ''does not contain recommendations and is not a decision document.''

In the cover letter accompanying the document, the Acting Assistant Secretary for Policy, Management and Budget found that:

> The projected costs of either new road access or rail access into Denali would exceed the projected costs for the National Park Service's 10-year, visitor access development program for the entire State of Alaska. Thus, we believe this study must be considered in conjunction with the other National Park Service proposals for visitor facilities and access in Alaska-proposals developed with input from the State of Alaska, the visitor industry and the public.

The National Park Service believes that it is a far more efficient use of funding to expand upon the existing visitor opportunities along the Park road, following the widely supported direction in the 1997 development concept plan, than to explore the much more controversial and expensive north access route. Park visitors have continued to support the management decision to maintain most of the Park road in its rustic, historic condition.

Comment: The Alaska Visitors Association commented that the number of trips on the Denali National Park Road apportioned to businesses and park visitors should not decrease over time in order to accommodate any National Park Service increase in the administrative and temporary categories.

NPS response: The National Park Service vehicle trip allocation in the 1986 General Management Plan (1754 total) was amended slightly by the 1997 Entrance Area and Road Corridor Development Concept Plan, which sets the limit of 1,776 vehicle trips. Under the regulations, the park would adhere to that limit for its administrative use. NPS notes that there have been fewer than 10 emergency vehicle trips in each of the past three years. Such additional emergency trips will not effect the allocations for other users. The NPS believes that some flexibility must remain in the system and that emergency traffic should not be constrained. While the NPS has committed to restraint in its administrative travel, the same cannot be done with emergency traffic. The agency must be able to respond to emergencies along the park road to provide for safe and enjoyable visitor use. NPS also notes that emergency or other non-routine road maintenance may require NPS to make or to authorize a NPS/Federal Highway Administration contractor to make additional trips to effect repairs. However, NPS will make every effort to schedule repairs pre- and post-season.

Comment: The State of Alaska commented that the final rule should incorporate an annual notice requirement and some sort of built in administrative appeal mechanism and that the ''Rules of the Road'' part of the regulations should not be used to indirectly restrict public access outside the Section 1110(a) and (b) processes.

NPS response: As discussed above, operation of the regulations including issuance of permits is consistent with section 1110(b) of ANILCA. The ''Rules of the Road'' will continue to be conditions of a permit. These driving rules are designed to increase safety on the Park road and are not a means of indirectly restricting access. Public access is enhanced by the operation of the visitor transportation system and the tour buses. Annual notice and administrative appeal provisions are already in place and will continue to be utilized.

Comment: The State of Alaska, the Alaska Outdoor Council, and two individuals commented that ANILCA ''guarantees'' economic and feasible access to inholdings and that the NPS cannot diminish the scope of this broad statutory right through regulation.

NPS response: These comments generally omitted the last sentence of Section 1110(b) of ANILCA: ''Such rights shall be subject to reasonable regulations issued by the Secretary to protect the natural and other values of such lands.''

The regulations do not deny access; they regulate access along the park road to protect natural and other values. The result of such protection within the road corridor is the high economic value of the inholdings in question. What were once mining claims are now instead valued by their proximity to the core of Denali and their access via the Park road, with its superlative wildlife viewing opportunities. The National Park Service is proposing to regulate, not deny this access.

As stated in the text of the proposed regulations, the traffic limits being proposed have also been reviewed as part of the General Management Plan in 1986 and the 1997 Entrance Area and Road Corridor Development Concept Plan. During the more recent planning process, the NPS received 262 written comments and heard testimony from 40 people. No comments were received opposing the overall level of 10,512 motor vehicle trip permits, although there were numerous comments that supported more restrictive regulation of vehicle traffic than was adopted in the final plan.

Comment: One individual commented that the proposed regulations threaten the economic viability of Kantishna businesses.

NPS response: As stated earlier, the regulations are consistent with section 1110(b) of ANILCA as well as providing for annual adjustments of permit levels. The National Park Service notes that only one individual raised the question of economic viability of the several Kantishna businesses. In addition to the current level of permits which more than afford adequate and feasible access to inholders, the visitor transportation system provides access to Kantishna. Area businesses also utilize the Kantishna airstrip.

Comment: One individual and one business owner noted that the proposed rules do not provide any incentive to voluntarily reduce vehicle use of the Park road.

NPS response: The final rule has not been modified to address voluntary actions. The NPS agrees it is in the best interests of Park visitors, including the Kantishna business visitors, and the government to limit their use of the road. The National Park Service hopes other users agree and will voluntarily limit access without regulatory incentives, and NPS will work on such efforts with all interested parties.

Comment: One individual commented that the rule prohibiting motor homes, campers, and trailers to travel to

Kantishna is too restrictive and should allow exceptions by the Superintendent.

NPS response: The final rule retains the prohibition of the use of motor homes, campers and trailers to travel to transport guests to Kantishna businesses. This provision does not prohibit private inholder use of these types of vehicles provided they are operated during specific times of the day. Adequate and feasible access using buses is available for Kantishna businesses to transport guests. The prohibited types of vehicles pose a safety concern if frequently used commercially.

Comment: The State of Alaska commented that the regulations must provide a mechanism for currently active inholders to seek adjustments of individual allocations and must provide for other inholders to acquire access for their possible future ''economic and other purposes.''

NPS response: The current allocations afford more than adequate and feasible access for inholders. In addition, the final regulation contemplates reallocation to address future needs.

Comment: The Wilderness Society and two Kantishna businesses commented that each Kantishna business should be allocated the same number of permits.

NPS response: The distribution of permits among Kantishna businesses as outlined in the 1997 plan and as provided for in the regulation is appropriate in that it is fair to Kantishna businesses (*i.e.,* provides reasonably necessary and economically feasible access), considers the unique characteristics of individual operations, and maintains the overall travel limits.

Comment: One Kantishna business commented that the superintendent should not have the authority to revoke road allocations in the case of a sale or transfer of a Kantishna business, since it would be a severe encumbrance upon the business.

NPS response: The final regulation continues to provide for a reevaluation of access needs upon sale or other change. Additional visitor use may be accommodated by the reevaluation while continuing adequate access for the business needs of the inholding. To address these concerns, the NPS intends to retain the established limit for an individual Kantishna business for 12 months after the sale of the business while the access requirements of the new owner are being evaluated.

Comment: One business and the Alaska Visitors Association commented that the proposed rule should stipulate that the National Park Service will work on transfer of the concession agreement and the vehicle permit allocation simultaneously.

NPS response: A regulation is not necessary, as consideration of any concession authorizations will also likely include consideration of vehicle permits at the same time.

Comment: Two individuals commented that the National Park Service has not provided adequate evidence, such as scientific studies, of the need for regulating traffic on the Park road.

NPS response: Studies addressing the importance of this regulation are identified and the topic discussed in the 1997 Entrance Area and Road Corridor Development Concept Plan. Other considerations including the large growth in visitor numbers, the condition of the road and the success demonstrated by road restrictions also make it clear that continuing the restrictions at the 1986 levels is best for the Park and the visitors.

Comment: The Denali Citizens Council, one Kantishna business, and several individuals commented that the regulations should include daily bus trip limits. The Wilderness Society, Denali Citizens Council, one Kantishna business, and several individuals also noted that the regulations should include daily limits on the Denali Natural History Tour.

NPS response: The National Park Service has already implemented daily bus trip limits including limits on the Denali Natural History Tour as outlined in the 1997 Entrance Area and Road Corridor Development Concept Plan. Since the bus systems are operated under concessions contracts, the National Park Service has the authority to enforce these restrictions as part of the conditions of the contracts.

Comment: The Alaska Visitors Association commented that the National Park Service should provide at least one year advance notice of specific numbers of the annual permit allocation.

NPS response: The regulations provide that an annual date to evaluate requests will be established. The National Park Service recognizes that businesses desire to know as far in advance as possible and the Superintendent will consider that desire in establishing the date.

Comment: The Alaska Visitors Association commented that absent documented safety or resource issues, the regulations should not be expanded to further control vehicular traffic.

NPS response: The National Park Service believes that safety and resource issues should be addressed in a proactive way rather than waiting for damage to resource values or injury to visitors to occur. The National Park Service will continue to monitor all aspects of Park use and resource considerations and manage accordingly. In any event, the final rule is consistent with current motor vehicle practices on the park road, and do not constitute an expansion.

Comment: Several commentors noted that the Denali Natural History Tour (also known as the short tour) does not stop at the Savage River, but instead turns around 2.3 miles further into the park at the Primrose Overlook. A few questioned why NPS does not count the short tour bus trips as part of the 10,512 annual permits.

NPS response: While the park road changes from pavement to gravel at the Savage River and that has traditionally been the site of the check station and the beginning of the restricted access section, that location does not readily accommodate large buses. The limited parking there is often filled with private vehicles and backing busses (as is required to turn around there) would be a hazard to pedestrians. The short tour buses are better and more safely accommodated at the Primrose Overlook where they can turn around without backing. As these buses only travel 2.3 miles up the moderate and improved grade past the Savage River before returning, there are no resource nor road wear reasons to include these trips in the annual limits and these trips have, therefore, always been excepted. This issue received thorough public review in the 1997 Entrance Area and Road Corridor Development Concept Plan and the accompanying Environmental Impact Statement.

Analysis of Comments on Kantishna Firearms Safety Zone

Although many comments expressed general support for the entire proposed rule, NPS received a few comments specific to the seasonal prohibition on the discharge of firearms on public lands within the developed area of Kantishna. The closure applies on: the Kantishna Airstrip; the approximately 4.5 mile-long State Omnibus Act Road right-of-way; and all public lands located within one mile of the Kantishna Airstrip or the State Omnibus Act Road right-of-way (within the Park addition area surrounding Kantishna). Fourteen comments expressed specific support for the closure or suggested a more stringent closure was appropriate.

Comment: The Alaska Outdoor Council and the State of Alaska Office of the Governor did not oppose the closure. They suggested, however, that further evaluation of the need for this

closure was warranted and that NPS should guard against incremental expansions of or additions to this closure that favor non-consumptive Park uses and have cumulative impacts on consumptive uses. The state also pointed out that the state uses a one-half mile closure in many areas.

NPS response: NPS anticipates that public use will increase in this developed area. The fact that this area is developed distinguishes it from the approximately four million acres of Park addition and preserve land that is open to various types of hunting. The rule will only have a minimal effect as the Kantishna area is closed to sport hunting, protection of life and property is excluded, and there is only a small overlap of the permissible subsistence hunting periods and the visitor season. NPS finds that the closure is warranted.

Analysis of Comments on Wildlife Protection

Most commentors generally supported the wildlife closure regulations. Several people spoke in favor of the proposal at the public hearings and NPS received 25 written comments specifically supporting the proposed flexible closures for wildlife and wildlife habitat protection; two written comments were opposed. As explained below, NPS disagrees with the comments in opposition to this proposal and concludes that it does have the necessary legal authority for the closure provision as proposed. However, after reviewing the comments and further consideration of the proposal, we have determined that the proposed regulation is simply redundant with respect to the existing regulatory authorities pertaining to closures under 36 CFR 1.5 and 1.7. Accordingly, NPS has chosen not to promulgate this regulation but to instead continue to utilize existing regulations when wildlife closures are required.

The Department in 1986 concluded that the NPS regulations at 36 CFR 1.5 were not superceded by section 1110(a) and its implementing regulations:

> * * * Our review of section 1110(a) leads us to conclude that the closure of areas to the authorized uses (snowmachines, motorboats, airplanes, and nonmotorized surface transportation methods) should occur only under standards of the law which this section is to implement. Accordingly, the final regulations have been amended to provide that no closure to any use authorized under this section may be made unless the ''area manager determines that the use would be detrimental to the values of the unit or area.''
>
> It is Interior's view however, that these uses may be limited or restricted pursuant to other applicable law. *The Secretary of the Interior has the authority in the areas administered by Interior to close areas or restrict use for a variety of reasons, such as for health and safety. We do not believe that the provisions of this section of ANILCA were intended to preclude the Secretary from utilizing other statutory authorizations to restrict these uses.* The proposed and interim regulations attempted to incorporate these other laws and the standard stated above, for emergency closures. After reconsideration of these closure provisions as a result of the comments made about the standard for closure under section 1110(a), Interior has determined that these regulations should be limited to closures under the authority of that section. Accordingly, by, limiting these regulations to closures authorized by section 1110(a), it was determined that the category of closure ''emergency'' was no longer necessary, and as such is covered by other established authority. *Regulations providing for the closure of areas for reasons other than the provisions of section 1110(a) include: For NPS, 36 CFR 1.5; for FWS, 50 CFR 25.21; and for BLM, 43 CFR 8364.*
>
> 51 FR 31619, 31627–8 (September 4, 1986) (emphasis added).

Comment: The Alaska State Snowmachine Association and the Alaska Outdoor Council question the legal authority of the NPS to permit the Superintendent to make seasonal closures and take other actions to protect wildlife and indicates that such authority is inconsistent with ANILCA section 1110(a). The State of Alaska, Office of the Governor recognized that NPS needs flexibility, but suggested the proposed rule was too wide-ranging and offered several suggestions to limit the range of the rule.

NPS response: The Department regulations at 43 CFR 36.11(h)(6) explicitly provide that nothing in that section limits the authority of the appropriate federal agency to restrict or limit uses of an area under other statutory authority. The quote in the previous response demonstrates that the Department has consistently maintained that the closure provisions of 1.5 are available when appropriate and are not preempted by the regulations implementing section 1110(a). The 1986 regulations recognize and confirm the responsibility of the NPS to protect the resource values of the Park units in Alaska not only through a finding of detriment to Park resources under section 1110(a), but also, where applicable, the use of other closure authorities such as those in 36 CFR 1.5.

For example, if NPS sought to close an area only to snowmachines due to the detrimental effects of snowmachines to that area, that closure must be implemented under the section 1110(a) regulations (43 CFR 36.11(h)). However, if high avalanche danger necessitated closing an area to all entry or use (thereby including snowmachines), such a closure can be appropriately implemented in accordance with 36 CFR 1.5 and 1.7. Similarly, closing an area to all uses under 36 CFR 1.5 for resource protection purposes is permissible so long as the closure is reasonable under the given circumstances. Most uses of this closure authority in the past within the Park have occurred during the summer visitor season and are unrelated to section 1110(a) access issues.

Section-by-Section Analysis

36 CFR 5.2(b), 5.4(a) and 5.10(a)

To reflect the name change to the Park that occurred with the enactment of ANILCA, the rule changes the name of the Park, as it appears in these sections, from Mount McKinley National Park to Denali National Park and Preserve (Pub. L. 96–487 section 202(3)(a), Dec. 2, 1980). In § 5.4(a) the reference to ''McKinley Park Hotel'' in the existing regulations is replaced with ''Denali Park Railroad Depot.'' This change reflects the fact that the 1996 Final Denali Entrance Area and Road Corridor Development Concept Plan Environmental Impact Statement (1996 Final Entrance and Road Plan), which was approved in a 1997 Record of Decision, adopted September 2001 as the closing date for the hotel. The railroad depot, which is just across the road, is substituted for the hotel because the depot will remain open. No change is made to the regulatory content of the other sections.

36 CFR 13.2(c)

This section lists those Parks statutorily excepted from applicability of the subsistence regulations found in Part 13, subpart B. In the case of Denali, only part of the Park was statutorily excepted (*i.e.,* that ''core'' part formerly known as Mount McKinley National Park, and referred to herein as the ''Old Park'') (Pub. L. 96–487, section 202(3)(a), Dec. 2, 1980). The rule revises this section to use that terminology to clarify the meaning of the current § 13.2(c) phrase ''* * * and parts of Denali National Park.'' The new language more clearly specifies the intended area and does not change the regulatory application of the section.

36 CFR 13.63(d), Denali Park Road: Motor Vehicle Traffic

This rule codifies the 1986 Denali National Park and Preserve General Management Plan (GMP) motor vehicle use level of 10,512 vehicle round trips on the Denali Park road west of the Savage River from Memorial Day weekend through mid-September.

Consideration of factors such as natural resource protection (including maintaining the opportunity for unparalleled wildlife watching), road wear and maintenance, environmental impacts and traffic safety led to this limit. The 1997 Final Entrance Area and Road Corridor Development Concept Plan considered these issues and called for retaining the annual season motor vehicle traffic level (10,512) as established in the 1986 GMP. Public comment on the draft development concept plan, which was designed to be applicable for 10–15 years, indicated widespread support for retaining the GMP level.

Because a portion of the motor vehicle traffic on the Denali Park road is destined for commercial lodges and other private inholdings in Kantishna at the western end of the road, the proposed regulation includes consideration of the requirements of ANILCA section 1110(b). ANILCA section 1110(b) affords inholders such rights as may be necessary to ensure adequate and feasible access to their land for economic and other purposes, subject to reasonable regulations that protect the natural and other values of the conservation system unit. Therefore, this section would be implemented with consideration of, and in compliance with, 43 CFR 36.10 (Access to Inholdings).

The primary visitor attraction at the Park is the unparalleled array of Alaska wildlife regularly seen from the Denali Park Road and the opportunity to see natural predator-prey interactions. In 1972, to ensure that the increasing number of visitors would continue to see grizzly bears, caribou, moose, Dall sheep, the occasional wolf, as well as other species of Alaska wildlife in their natural habitat, the National Park Service developed a shuttle bus system that replaced most of the private vehicular traffic with buses capable of transporting more passengers. Concurrently, general private vehicular traffic was limited to the easternmost 15 miles of the 88-mile Park road. Adding additional traffic to the road, especially private vehicular traffic, has been shown to displace wildlife. Private vehicle use causes the greatest disturbance because the vehicles can stop at will and passengers approach wildlife on foot. Although bus passengers may choose to be dropped off at any safe point along the road, when wildlife is near, passenger discharge is controlled to avoid conflicts with, and displacement of, wildlife. Accordingly, opportunities for viewing and photographing wildlife abound while the bus is stopped for those purposes.

Traffic safety is also a significant factor for limiting use to the GMP allocation. Park visitors consistently support the NPS decision to maintain most of the Denali Park Road in its rustic, historic condition. The character of the Park road and its relationship with the landscape through which it passes are integral to the visitor experience at Denali. Consequently, 72 miles of the road are graded gravel, much of which varies between one and one-and-one-half lanes wide. As the road traverses scenic mountain passes between broad river valleys, it often dips and climbs and winds as it clings precipitously to the mountains' supporting contours. The road, which was originally designed for 1930s era vehicles and levels of use, now accommodates larger traffic levels—a mix of large tour and shuttle buses, private vehicles for inholder access, park administrative and maintenance traffic, and service vehicles traveling to Kantishna lodges.

National Park Service concern over traffic safety is also based on bus accidents that have occurred in 1969, 1974, 1981 and 1989, and that have resulted in six fatalities and numerous serious injuries to park visitors. The historic character of the road warrants special attention to safety procedures for its use. Known locally as the ''Rules of the Road,'' practices such as driving with lights on and specific procedures for yielding to buses have developed through time. NPS will hereafter apply these practices as a term and condition of a permit to operate a vehicle on the restricted access section of the Denali Park Road.

This rule provides the superintendent with the regulatory authority to annually evaluate anticipated-use requirements and to reasonably apportion motor vehicle permits for the restricted access section of the road among authorized users. Specific allocations for Kantishna motor vehicle traffic will help ensure long-term protection of the current visitor experience and of wildlife populations along the road corridor. Motor vehicle permits for present and future Kantishna businesses would be reallocated in accordance with proposed section 13.63(d)(2) within the annual limit of 10,512 permits. A total of 1,360 vehicle round trips for Kantishna inholders are authorized, comprising 13 percent of all annual traffic. This total includes all Kantishna traffic (individual inholders, mining claim owners, lodges and others). As mining claims continue to be acquired by the federal government, some Kantishna traffic will decrease. Kantishna businesses can also continue using both the Kantishna airstrip and the NPS visitor transportation system buses for guest access, as well as operate buses and other vehicles on the Park road as allocated below. The current number of round trips during the visitor season for the existing businesses are:

- Denali Backcountry Lodge: 315.
- Kantishna Roadhouse: 420.
- Northface Lodge/Camp Denali: 315.

Each business may determine the type of vehicle use to best suit their needs. However, recreational vehicle (RV) travel (motor homes, trailers, and campers) for the purpose of transporting guests to and from Kantishna businesses is not permitted. Motor vehicle permits will not be transferable from one business operation to another. Additionally, when a business is sold to a different entity, National Park Service will re-evaluate the access requirements of the new entity. If a business ceases to operate, or changes dramatically, it is intended that the superintendent would re-allocate the permits. The National Park Service intends to retain the established limit for an individual Kantishna business for 12 months after the sale of the business while access requirements of the new owner are being evaluated.

36 CFR 13.63(g), Firearms

The rule establishes a seasonal closure to the discharge of firearms on public lands in the developed area of Kantishna, except for the protection of life or property. The closure applies on: the Kantishna Airstrip; the approximately 4.5 mile-long State Omnibus Act Road right-of-way, and; all public lands located within one mile of the Kantishna Airstrip or the State Omnibus Act Road right-of-way (within the Park addition area surrounding Kantishna).

The closure is effective seasonally beginning the Saturday of Memorial Day weekend through the second Thursday following Labor Day, or September 15, whichever comes first. This period is the time of heaviest overlap between subsistence hunting and other seasonal visitor activities in the Kantishna area. The purpose of the closure is to reduce the level of risk of firearm-related injury inherent in heavy use areas without unduly affecting authorized subsistence uses. The restriction does not apply on private property. This closure follows consultation with the State of Alaska.

36 CFR 13.63(h), Snowmachines (Snowmobiles)

The rule defines ''traditional activities,'' as the term is used in the Alaska National Interest Lands Conservation Act (ANILCA) section 1110(a) and 43 CFR 36.11, for the portion of Denali National Park and Preserve formerly known as Mount McKinley National Park (Old Park). For that area only, traditional activity is: an activity that generally and lawfully occurred in the Old Park contemporaneously with the enactment of ANILCA, and that was associated with the Old Park, or a discrete portion thereof, involving the consumptive use of one or more natural resources of the Old Park such as hunting, trapping, fishing, berry picking or similar activities. Recreational use of snowmachines was not a traditional activity. If a traditional activity generally occurred only in a particular area of the Old Park, it would be considered a traditional activity only in the area where it had previously occurred. In addition, a traditional activity must be a legally permissible activity in the Old Park.

The rule closes the former Mount McKinley National Park to all snowmachine use. The closure does not affect the Park's four-million-acre ANILCA additions where snowmachine use is permitted for traditional activities and for travel to and from villages and homesites, subject to reasonable regulations. (43 CFR 36.11(c)). The rule also requires the superintendent to determine that snow cover is adequate in order to protect the underlying vegetation and soils before seasonally opening the latter areas. This determination is necessary to prevent damage to soils and exposed vegetation and is similar to a provision at the Kenai National Wildlife Refuge (50 CFR 36.39(i)(4)(i)) which NPS understands has worked well since 1986. (See also, Denali State Park, 11 AAC section 20.425). NPS again notes that where snowmachine activity is presently authorized by section 1110(a), that activity is subject to the regulations found at 36 CFR 2.18(a), (b), (d) and (e).

A copy of the June, 2000, *Statement of Finding* prepared in connection with this rule and maps of the affected area can be obtained by visiting the Park's web site at *www.nps.gov/dena/statement.htm* or by writing or calling the superintendent at the address or number printed at the top of this rule.

Drafting information. The primary authors of this rule are Ken Kehrer, Jr., Mike Tranel, Joe Van Horn, Steve Carwile and Russel J. Wilson, Denali National Park and Preserve; Lou Waller and Paul Hunter, NPS Alaska Support Office also contributed.

Compliance With Laws, Executive Orders and Department Policy

Regulator Planning and Review (Executive Order 12866)

This rule is a significant rule and has been reviewed by the Office of Management and Budget under Executive Order 12866. This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. The NPS has prepared a Final Cost-Benefit Analysis that is available from the Denali National Park and Preserve superintendent. Based on this analysis, the NPS anticipates positive net benefits such as: increased public safety; improved public understanding of Park regulations; and, continued protection of wildlife, preservation of natural interactions among wildlife, and the minimization of habitat disturbances that contributes to visitors' use and enjoyment of Park resources. This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. The rule does not alter the budgetary effects, entitlements, grants, user fees, loan programs or the rights or obligations of their recipients. The rule may raise novel legal or policy issues, however, the primary effect of the proposed action is to consolidate in the Code of Federal Regulations or otherwise clarify requirements that already exist under separate NPS authorities.

Regulatory Flexibility Act

The Department of the Interior has determined that this regulatory action will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The primary effect of this action is to consolidate in the Code of Federal Regulations or otherwise clarify requirements that already exist under separate authorities. Only one of the requirements addressed by the action is new. The new requirement would apply specific ''Rules of the Road'', such as driving with lights on and following procedures for yielding to buses, as a permit condition for vehicle use on the restricted access section of the Denali Park Road. This new requirement is not anticipated to inconvenience drivers or otherwise adversely impact any small entity. Substantial areas exist nearby where Park users can go who may be displaced as a result of firearms and snowmachine closures in this proposed action. The wide availability of such substitute-use areas would lessen, or eliminate, any impact on Park users, including small entities. The only direct compliance cost that would be imposed by this proposed action is the requirement to provide drivers license information, vehicle license plate information, and a vehicle description for purposes of issuing a permit to operate a motor vehicle on the restricted access section of the Denali Park Road. That requirement is not anticipated to impose significant costs on the public, including small entities. No other direct compliance costs would be imposed. Therefore, significant impacts on small entities are not expected from this proposed action.

A qualitative Cost-Benefit Analysis was done and indicates positive net benefits for each component of the regulatory action. Two specific components that had the most public interest were the snowmobile and the road regulations. The road regulations codified the existing trip limits and the ''Rules of the Road''. The trip limits have been in effect since the 1986 general management plan and are sufficient to provide adequate and feasible access for the private holdings in Kantishna along with the current levels of Park visitors. The benefits exceed the potential costs in this case since this action protects the premier wildlife watching that is the main reason the public comes to the Park and local businesses. The ''Rules of the Road'' have been in place for years and most drivers already follow them. The codifying of these rules will improve safety and reduce accidents. The snowmobile regulation reinstates a closure of the Old Park to snowmachine use. There will be very little cost associated with this regulation since almost no snowmachine activity has taken place in the Old Park since it was created 83 years ago. There is very little commercial snowmachine operation in the area and there will be some benefits to the local dog mushing and skiing operations. Therefore both of these components will have a net economic benefit (see the Final Cost-Benefit Analysis that is available from the Denali National Park and Preserve superintendent).

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business

Regulatory Enforcement Fairness Act. This rule does not have an annual effect on the economy of $100 million or more; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises. The primary effect of this action is to consolidate in the Code of Federal Regulations or otherwise clarify requirements that already exist under separate NPS authorities. Copies of a Final Cost-Benefit Analysis are available from the Denali National Park and Preserve superintendent. The analysis found that no significant costs would result from this action.

Unfunded Mandates Reform Act

The NPS has determined and certifies pursuant to the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*), that this rule will not impose a cost of $100 million or more in any given year on local, state or tribal governments or private entities. Copies of a Final Cost-Benefit Analysis are available from the Denali National Park and Preserve superintendent. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required. The rule applies only to Federal Park land and there should be no cost to the State from any of these regulations. The State was consulted on the topics that were of mutual concern. The NPS determined that there are no effects to any Federally recognized tribes.

Takings (Executive Order 12630)

In accordance with Executive Order 12360, the rule does not have significant takings implications. The primary effect of this proposed action is to consolidate in the Code of Federal Regulations or otherwise clarify requirements that already exist under separate NPS authorities. A takings implication assessment is not required.

Federalism

In accordance with Executive Order 13132, the rule does not have federalism implications which warrant the preparation of a Federalism Assessment. The substantive provisions of this rule apply mainly to the portion of Denali National Park and Preserve that was formerly known as Mount McKinley National Park which is under the exclusive jurisdiction of the United States. The primary effect of this proposed action is to consolidate in the Code of Federal Regulations or otherwise clarify requirements that already exist under separate NPS authorities.

Civil Justice Reform (Executive Order 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and does not meet the requirements of sections 3 (a) and 3(b)(2) of the Order.

Paperwork Reduction Act

This regulation requires an information collection from 10 or more parties and a submission under the Paperwork Reduction Act is required. The information collection requirements contained in this rule at § 13.63(d)(2) have been approved by the Office of Management and Budget and assigned clearance number 1024–0026. This information is being collected to solicit information that is necessary for the Superintendent to issue vehicle permits. The public is being asked to provide this information in order for the Park to track the number of permits issued and to whom they are issued. The information will be used to grant administrative benefits. The obligation to respond is required to obtain a benefit.

Specifically, the NPS needs the following information to issue the permit:

(1) Drivers license number and State of issue.

(2) Vehicle license plate number and State.

(3) Vehicle description, including year, make and model.

The public reporting burden for the collection of information in this instance is estimated to be 0.10 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing and reviewing the collection of information. This would make a total of about 25 hours annually.

National Environmental Policy Act

NPS has determined that most aspects of this rulemaking, with the exception of the portion concerning a snowmachine closure, have been previously addressed pursuant to the National Environmental Policy Act, 42 U.S.C. 4332, in environmental documents prepared in conjunction with Park management plans. These are the environmental assessments prepared in conjunction with the Park General Management Plan which was approved in a 1986 Finding of No Significant Impact, or the environmental impact statement prepared in conjunction with the Denali Entrance Area and Road Corridor Development Concept Plan which was approved in a 1997 Record of Decision. Copies of these documents are available from the Denali National Park and Preserve superintendent.

An environmental assessment (EA) was prepared by the NPS, in accordance with NEPA and its implementing regulations at 40 CFR 1508.9, on a proposed special regulation to permanently close the Old Park to snowmachine use. The EA was released for 60 days of public comment on November 9, 1999. The EA evaluated four alternatives: (1) No action, a continuation of snowmachine use for traditional activities in the Old Park; (2) closing all but a 180,000 acre area in the southeast part of the Old Park to snowmachine use for traditional activities; (3) instituting a series of temporary closures to the use of snowmachines in the Old Park by use of the procedures required in Section 1110(a) of ANILCA, including hearings in the vicinity and a published finding of detriment, and (4) permanently closing the Old Park to snowmachine use via a special regulation and a regulatory definition of ''traditional activities.'' A Finding of No Significant Impact (FONSI)was approved on June 6, 2000. The environmental consequences of the snowmachine use closure in the old Mount McKinley National Park are minimal and are documented within the Environmental Assessment for the Permanent Closure of the Former Mt. McKinley National Park to Snowmachine Use and the FONSI. The action is also in the scope of the impacts anticipated in the approval given for the Park's General Management Plan in 1986.

A Summary Evaluation and Findings, pursuant to Section 810(a) of ANILCA, was attached to the Environmental Assessment for the Permanent Closure of the Former Mt. McKinley National Park to Snowmachine Use to document the impacts of a closure and alternatives on subsistence activities within the area. Lands in the Former Mount McKinley National Park are closed to subsistence activities; and, therefore, the analysis concluded that a closure would not result in a significant restriction to subsistence uses. Copies of these documents are also available from the Denali National Park and Preserve superintendent.

List of Subjects

36 CFR Part 5

Alcohol and alcoholic beverages, Business and industry, Civil rights, Equal employment opportunity, National parks, Transportation.

36 CFR Part 13

Alaska, National parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, the NPS amends 36 CFR Chapter I, Parts 5 and 13 as follows:

PART 5—COMMERCIAL AND PRIVATE OPERATIONS

1. The authority citation for part 5 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 17j–2, 462.

§ 5.2 [Amended]

2. In § 5.2(b) introductory text, the words ''Mount McKinley'' in the first sentence are revised to read ''Denali''.

§ 5.4 [Amended]

3. In § 5.4(a) introductory text, the words ''Mount McKinley (prohibition does not apply to that portion of the Denali Highway between the Nenana River and the McKinley Park Hotel)'' in the first sentence are revised to read, ''Denali National Park and Preserve (prohibition does not apply to that portion of the Denali Park road between the Highway 3 junction and the Denali Park Railroad Depot)''.

§ 5.10 [Amended]

4. In § 5.10(a) the words ''Mount McKinley'' in the first sentence are revised to read, ''Denali''.

PART 13—NATIONAL PARK SYSTEM UNITS IN ALASKA

5. The authority citation for part 13 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 462(k), 3101 *et seq.*; Sec. 13.65 also issued under 16 U.S.C. 1a–2(h), 20, 1361, 1531, 3197; Pub L. 105–277, 112 Stat. 2681, October 21, 1998; Pub. L. 106–31, 113 Stat. 57, May 21, 1999.

§ 13.2 [Amended]

6. In § 13.2(c), the words ''and parts of Denali National Park'' are revised to read ''the former Mt. McKinley National Park''.

7. Section 13.63 is amended by adding paragraphs (d), (g) and (h) to read as follows:

§ 13.63 Denali National Park and Preserve.

* * * * *

(d) *Operation of motor vehicles on the Denali Park road west of the Savage River*—(1) *Do I need a permit to operate a motor vehicle on the Denali Park road west of the Savage River?* Yes, you must obtain a permit from the superintendent to operate a motor vehicle on the restricted section of the Denali Park road. The restricted section begins at the west end of the Savage River Bridge (mile 14.8) and continues to the former Mt. McKinley National Park boundary north of Wonder Lake (mile 87.9).

(2) *How many permits will be issued each summer?* The superintendent is authorized, under this section, to issue no more than 10,512 motor vehicle permits each year for access to the restricted section of the road. The superintendent will issue the permits for the period that begins on the Saturday of Memorial Day weekend and continues through the second Thursday following Labor Day or September 15, whichever comes first. Each permit allows one vehicle one entry onto the restricted portion of the Park road.

(3) *How will the superintendent manage the permit program?* (i) The superintendent will apportion motor vehicle permits among authorized users following the procedures in § 13.31. Authorized users are individuals, groups and governmental entities who are allowed by law or policy to use the restricted section of the road.

(ii) The superintendent will establish an annual date to evaluate permit requests and publish that date, along with the results of the annual apportionment, in the superintendent's compendium of rules and orders. The superintendent's compendium is available to the public upon request.

(iii) The superintendent will re-evaluate the access requirements of any business that is sold, ceases to operate or that significantly changes the services currently offered to the public.

(4) *What is prohibited?* (i) No one may operate a motor vehicle on the restricted section of the Park road without a valid permit.

(ii) No one may use a motor home, camper or trailer to transport guests to a lodge or other business in Kantishna.

(iii) No one may transfer or accept transfer of a Denali Park road permit without the superintendent's approval.

* * * * *

(g) *Kantishna area summer season firearm safety zone*—(1) *What is prohibited?* No one may fire a gun during the summer season in or across the Kantishna area firearm safety zone, unless they are defending life or property.

(i) The summer season begins on the Saturday of Memorial Day weekend and continues through the second Thursday following Labor Day or September 15, whichever comes first.

(ii) The Kantishna Area firearm safety zone includes: the Kantishna Airstrip; the State Omnibus Act Road right-of-way; and all public lands located within one mile of the Kantishna Airstrip or the State Omnibus Act Road right-of-way, from the former Mt. McKinley National Park boundary at mile 87.9 to the south end of the Kantishna Airstrip.

(h) *Snowmachine (snowmobile) operation in Denali National Park and Preserve*—(1) *What is the definition of a traditional activity for which Section 1110(a) of ANILCA permits snowmachines to be used in the former Mt. McKinley National Park (Old Park) portion of Denali National Park and Preserve?* A *traditional activity* is an activity that generally and lawfully occurred in the Old Park contemporaneously with the enactment of ANILCA, and that was associated with the Old Park, or a discrete portion thereof, involving the consumptive use of one or more natural resources of the Old Park such as hunting, trapping, fishing, berry picking or similar activities. Recreational use of snowmachines was not a traditional activity. If a traditional activity generally occurred only in a particular area of the Old Park, it would be considered a traditional activity only in the area where it had previously occurred. In addition, a traditional activity must be a legally permissible activity in the Old Park.

(2) *May a snowmachine be used in that portion of the park formerly known as Mt. McKinley National Park (Old Park)?* No, based on the application of the definition of traditional activities within the park to the factual history of the Old Park, there are no traditional activities that occurred during periods of adequate snow cover within the Old Park; and, thus, Section 1110(a) of ANILCA does not authorize snowmachine access. Hunting and trapping were not and are not legally permitted activities in the Old Park at any time of the year. Sport fishing has not taken place in the Old Park during periods of adequate snow cover due to weather conditions that are adverse to sport fishing, and the limited fishery resources within the Old Park. During periods of adequate snow cover, berry picking is not feasible, and has not taken place in the Old Park. Under the definition, recreational use of snowmachines is not a traditional activity. There are no villages, homesites or other valid occupancies within the Old Park. Access by snowmachine through the Old Park in transit to homesites, villages and other valid occupancies was not lawful prior to the enactment of ANILCA and is

available through routes outside the Old Park that have been historically used for that purpose. Therefore, the use of snowmachines is not authorized by section 1110(a) for such travel. Further, Congress did not authorize subsistence activities in the Old Park. In addition, the National Park Service has determined that the use of even a few snowmachines in the Old Park would be detrimental to the resource values of the area. Therefore, because no usage is authorized in the Old Park by section 1110(a) the Old Park remains closed to all snowmachine use in accordance with 36 CFR 2.18.

(3) *Where can I operate a snowmachine in Denali National Park and Preserve?* You can use a snowmachine outside of the Old Park for traditional activities or travel to and from villages and homesites and other valid occupancies as authorized by 43 CFR 36.11(c), or when lawfully engaged in subsistence activities authorized by § 13.46.

(4) *What types of snowmachines are allowed?* The types of snowmachines allowed are defined in § 13.1(q) under *snowmachine* or *snowmobile*.

(5) *What other regulations apply to snowmachine use?* Snowmachine use is governed by regulations at § 2.18(a) of this chapter, traffic safety, § 2.18(b) of this chapter, state laws, and § 2.18(d) and (e) of this chapter, prohibited activities; and 43 CFR 36.11(a)(2) adequate snow cover, and 43 CFR 36.11(c) traditional activities.

(6) *Who determines when there is adequate snow cover?* The superintendent will determine when snow cover is adequate for snowmachine use. The superintendent will follow the procedures in §§ 1.5 and 1.7 of this chapter to inform the public.

(7) Nothing in this section shall limit the authority of the superintendent to restrict or limit uses of an area under other statutory authority.

Dated: June 7, 2000.

Donald J. Barry,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 00–14754 Filed 6–16–00; 8:45 am]

BILLING CODE 4310–70–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[OH–132–2; KY–116–2; KY–84–2; FRL–6717–1]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Ohio and Kentucky

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: We are determining that the Cincinnati-Hamilton moderate ozone nonattainment area (Cincinnati-Hamilton area) has attained the 1-hour ozone National Ambient Air Quality Standard (NAAQS) by its extended attainment date. The Cincinnati-Hamilton area includes the Ohio Counties of Hamilton, Butler, Clermont, and Warren and the Kentucky Counties of Boone, Campbell, and Kenton. This determination is based on three years of complete, quality-assured, ambient air monitoring data for the 1996 to 1998 ozone seasons that demonstrate that the ozone NAAQS has been attained in the area, as well as the most recent 3-year period of data from 1997–1999, which shows the area is continuing to attain. On the basis of this determination, EPA is also determining that certain attainment demonstration requirements, along with certain other related requirements of Part D of Title 1 of the Clean Air Act (CAA), are not applicable to the Cincinnati-Hamilton area.

We are also approving an exemption for the Cincinnati-Hamilton area from the nitrogen oxides (NO_X) requirements as provided for in section 182(f) of the CAA. Section 182(f) establishes NO_X requirements for ozone nonattainment areas. However, it also provides, in subsection 182(f)(1)(A), that these requirements shall not apply to an area if the Administrator determines that additional NO_X reductions would not contribute to attainment of the ozone NAAQS in that area. Because the Cincinnati-Hamilton area is currently attaining the ozone NAAQS without benefit of additional NO_X reductions, we are granting the area a NO_X exemption. As a result, the Cincinnati-Hamilton area will no longer be subject to the section 182(f) NO_X requirements; however, all NO_X controls previously approved for the area by EPA must continue to be implemented.

We are also approving the State of Ohio Environmental Protection Agency's (OEPA) and the Commonwealth of Kentucky Natural Resources and Environmental Protection Cabinet's (Cabinet) requests to redesignate the Cincinnati-Hamilton area to attainment of the 1-hour ozone NAAQS. The original redesignation request from OEPA, dated June 28, 1999, was received on July 2, 1999, and completed on December 22, 1999. The Cabinet's redesignation request to EPA was dated October 29, 1999. In approving these redesignation requests, EPA is also approving, as revisions to the Ohio and Kentucky State Implementation Plans, the States' plans for maintaining the 1-hour ozone standard for the next 10 years.

EFFECTIVE DATE: This action will be effective on July 5, 2000.

ADDRESSES: Copies of the OEPA's and the Cabinet's submittals and other information are available for inspection during normal business hours at the following locations. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. The reference file numbers are OH–132, KY–116 and KY–84.

United States Environmental Protection Agency, Region 5, Air Programs Branch (AR–18J), Regulation Development Section, 77 West Jackson Boulevard, Chicago, Illinois 60604.

United States Environmental Protection Agency, Region 4, Air Planning Branch, Regulatory Planning Section, 61 Forsyth Street SW, Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT:

William Jones, Environmental Scientist, United States Environmental Protection Agency, Region 5, Air Programs Branch (AR–18J), Regulation Development Section, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6058, (jones.william@epa.gov).

Allison Humphris, Environmental Scientist, United States Environmental Protection Agency, Region 4, Air Planning Branch, Regulatory Planning Section, 61 Forsyth Street SW, Atlanta, Georgia 30303, (404) 562–9030, (humphris.allison@epa.gov).

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Whenever ''we,'' ''us,'' or ''our'' are used we mean EPA.

I. What Is the Background for These Actions?

See proposed rulemaking published January 24, 2000 (65 FR 3630). On March 17, 2000 (65 FR 14510), EPA reopened the public comment period until March 24, 2000.

Prior to the January 24, 2000 proposal to redesignate the area, EPA approved two 1-year extensions of the area's attainment date (62 FR 61241, November 17, 1997; 63 FR 14673, March 26, 1998) making its new attainment date November 15, 1998. The area attained the 1-hour standard by its extended attainment date (November 15, 1998).

II. What Comments Did We Receive and What Are Our Responses?

Comments in support of the rulemaking action are not summarized below. The adverse comments and EPA responses to them are provided below.

Comment 1: The Ohio Chapter of the Sierra Club requested a 30-day extension, beyond February 23, 2000, of the public comment period due to the proposal's alleged technical complexity and the unavailability of their Conservation Chair during the last week of the comment period.

Response 1: EPA reopened the comment period until March 24, 2000. See 65 FR 14510, dated March 17, 2000.

Comment 2: The commenter believes that the air quality protections provided by designation of the area as nonattainment are needed to address continued adverse health effects from poor air quality. EPA has adopted a more stringent air quality standard based on an 8-hour average rather than 1-hour average ozone concentrations. The 8-hour average standards have been ''suspended'' by the Circuit Court of Appeals of the District of Columbia. The court stated that it accepted EPA's findings that tighter standards were needed to protect public health. The commenter claims that an important factor in the litigation is that even the 8-hour standard is insufficient to protect public health with an adequate margin of safety. Thus, the commenter implies that attainment of the 1-hour ozone standard is insufficient to protect public health.

The commenter does not analyze air quality in relation to the 1-hour standard, the 8-hour standard, or any other criteria. Instead, as evidence of poor air quality, the commenter cites analyses by the Natural Resources Defense Council. The comments highlight the deaths attributable to inhalation of particulate matter. The comments also reference Cincinnati Health Department estimates of '' 'about 5000 sublethal cases per year' of temporary respiratory problems due to ozone levels.'' The commenter concludes that ''lifting restrictions imposed by nonattainment status would violate the spirit if not the letter of the Act by increasing the exposure of the public to [unsafe levels].''

Response 2: EPA continues to believe that implementation of the 8-hour average ozone standard it adopted in 1997 would provide a more appropriate level of protection against ozone's adverse impacts. EPA is pursuing Supreme Court review of the Circuit Court's ruling, *American Trucking Assoc.* v. *EPA,* 175 F.3d 1027, modified on rehearing 193 F.3d 4 (D.C. Cir. 1999), with hopes of being able to apply the full legal authority of the Clean Air Act to mandate attainment of the revised standard. EPA does not believe that the Cincinnati-Hamilton area's status with respect to the 8-hour standard is relevant to the issues in this rulemaking, as this rulemaking concerns a redesignation under the 1-hour standard, not a designation made under the 8-hour standard, for which designations have yet to be made.

Comment 3: The commenters note the impact of poor air quality in Hamilton County (the county containing the City of Cincinnati) on the African-American community, and request that EPA ''consider the racial, ethnic and economic composition of local communities in relation to volatile organic compound (VOC) emissions, ozone formation, and ozone accumulation.'' The commenters allege that redesignating the area as attainment would violate President Clinton's Executive Order 12898.

Response 3: The commenters imply that the area is not meeting the standard for ozone. EPA's rulemaking action here determines not only that the Cincinnati-Hamilton area is attaining the 1-hour standard for ozone, but that its State Implementation Plan and maintenance plan provide for attainment and maintenance of the standard throughout the area.

The commenters assert that African-American and low-income residents in the center-city are exposed to higher ozone levels than other residents. The air quality data for the entire Cincinnati-Hamilton area, however, reflects levels below the ozone NAAQS. Further, commenters' Appendix 1 indicates that ''ozone monitors in the north and northwest suburbs have traditionally measured the highest ozone levels'', whereas the monitors near the communities referenced by the commenters have measured comparatively lower levels of ozone.

We therefore find that the rulemaking at issue here is consistent with Executive Order 12898 and does not impose any disproportionately high and adverse human health or environmental effects on minority and low-income populations.

Comment 4: The commenters allege that the State Implementation Plan (SIP) is inadequate in addressing population and economic growth impacts in this region.

Response 4: The maintenance plan adequately takes into account growth and population impacts on emissions in the Cincinnati-Hamilton area. Both Ohio's and Kentucky's emissions projections for point sources use Bureau of Economic Analysis (BEA) industrial employment projection data broken down by Standard Industrial Classification (SIC) to ''grow'' the point source emissions into the future.

The average annual growth rates used to project point sources in the Ohio portion of the area were between -0.05 and 2.8 percent. The emissions projections for area sources are grown using BEA industrial employment data broken down by SIC for some area source categories. Other area source categories are projected using projected population data for the area. The growth rates used for area source projections were around zero to just over one percent per year.

In Kentucky, the growth rates for point sources were around a half percent decrease to around a four percent increase in growth per year. The ranges for area sources in Kentucky were from around zero to around three percent per year.

The mobile source emissions projections were made by the Ohio-Kentucky-Indiana Metropolitan Council of Governments (OKI), which is the local metropolitan planning organization. They used a travel demand model, and MOBILE5a–H (EPA's mobile source emissions factor model), along with post-processing programs to calculate emissions for the

area. The OKI travel demand model uses demographic and land use data for each of 1003 Traffic Analysis Zones and capacity and free-flow speed characteristics for each roadway segment in the transportation network to produce a ''loaded'' highway network with forecasted traffic volumes with revised speeds (based on specified speed/capacity relationships). Complete sets of population, household and employment forecasts were prepared for 2010 based on the 1990 Census and projections from the Ohio Department of Development and Kentucky State Data Center. The modeling process used to develop this 2010 emissions data was calibrated using the latest demographic and land use data available. The transportation network used in this analysis includes the existing highway and transit network plus all capacity-related highway projects included in OKI's financially-constrained 2020 Metropolitan Transportation Plan as amended in June 1999. The emissions projections in the area do take into consideration growth and changes in population.

A comparison was made of the change in volatile organic compound and nitrogen oxides emissions in the maintenance plan for the Cincinnati-Hamilton area versus the statewide emissions estimates used in the Tier 2 rulemaking. ''Data Summaries of Base and Future Year Mass and Modeling Inventories for the Tier 2 Final Rulemaking, Detailed Report,'' EPA420–R–99–003, September 1999. In the maintenance plan the area-wide VOC emissions decreased 11% between 1996 and 2005.[1] This compares to statewide emissions decreases of 25% and 13% between 1996 and 2007 for Ohio and Kentucky, respectively. In the maintenance plan the area-wide NO_X emissions decreased 8% between 1996 and 2005. This compares to statewide emissions decreases of 47% and 45% between 1996 and 2007 for Ohio and Kentucky, respectively.

The statewide NO_X emissions were projected lower in the EPA report mainly due to projected emissions reductions required by EPA rules affecting Electric Generating Units. If the reductions from Electric Generating Units were not included in the statewide projections then the statewide NO_X emissions reductions would be around 10% and 6% for Ohio and Kentucky, respectively. This projection without crediting Electric Generating Units reductions compares well with the estimates in the maintenance plans. The maintenance plans did not include the Electric Generating Units reductions in projections of future emissions. Overall, this shows that the states' estimates of future NO_X emissions in the maintenance plan are higher than what would be expected to occur due to population and economic growth.

This rough comparison indicates that the maintenance plans do not underestimate the affects of population and economic growth. The maintenance plans' estimates of future emissions more than adequately account for any future population or economic growth in the Cincinnati-Hamilton area. The states' estimates of future growth provide a margin of safety, are appropriate, reasonable and meet EPA standards for maintenance plans.

Comment 5: The commenter is concerned that the state of Ohio is inadequately enforcing the Clean Air Act. The commenter indicates that it has identified some indications that Ohio is failing in implementation and enforcement of the SIP. For example, the commenter states that the air quality monitor in Middletown has demonstrated that air quality standards for ozone have been exceeded. AK Steel of Middletown is the fourth largest emitter of VOCs (9006.2 tons per year) in Ohio according to an EPA analysis of data accumulated between 1990 and 1995. The commenter claims, however, that EPA sector facility indexing project data shows that for all of 1997 and for the first two quarters of 1998, the most recent quarters on the database, AK Steel was out of compliance with SIP and National Emission Standards for Hazardous Air Pollutants requirements. The commenter states that no penalties, enforcement actions, or schedules of compliance are listed in the database and that there have been no news releases by Ohio EPA announcing any recent enforcement actions. A similar situation is alleged to have occurred with the local power plant, Cinergy Beckjord, which the commenter assumes to be one of the larger emitters in the region. The commenter asserts that the facility is now being sued by EPA for apparently skirting the CAA for many years despite supervision by the State of Ohio. The commenter objects to EPA's acceptance of Ohio's SIP as protective of the 1-hour ozone NAAQS given alleged lax or ineffective monitoring and enforcement of Hamilton County's largest polluters by state authorities and their designates.

Another commenter argues that the maintenance plan is also not approvable because it lacks enforcement programs and commitments of resources as required by the Clean Air Act. 42 U.S.C. 7410(a)(2)(E). The commenter claims that EPA simply assumes that the various measures relied on for future emission reductions will continue to be implemented. Without explicit commitments of legal authority and resources to implement all of those measures, the commenter argues that the maintenance plan is not approvable.

Response 5: Regardless of any alleged implementation issues, the area is attaining the 1-hour ozone standard. In fact, the entire state of Ohio is now in attainment for ozone. The commenter noted that the ozone monitor in Middletown has recorded exceedances of the NAAQS. The monitoring data for the area show that during the 1997–1999 time period, an exceedance occurred once in 1997 and once in 1999. This averages out to 0.67 expected exceedances during the 1997–1999 time period. This is below 1.0 and shows that the monitor is monitoring attainment of the 1-hour ozone standard.

The CAA requires the area to have a fully approved SIP and to have met all of the applicable requirements of the CAA. The area's SIP satisfies these requirements as described in EPA's proposed rulemaking published on January 24, 2000 (65 FR 3630). The measures that Ohio is relying on to maintain the 1-hour ozone standard have been approved into the SIP and are state and federally enforceable. See references to approved SIP in the January 24, 2000 proposed rulemaking. The state must continue to implement these measures as provided for in the federally approved SIP.

Ohio has committed to select and implement the maintenance plan contingency measures within 12 months of a violation of the 1-hour ozone standard. See April 14, 1995 letter from Donald Schregardus, OEPA to David Kee, EPA, for further information. The commenter provided no evidence that the maintenance plan fails to satisfy section 110(a)(2)(E). The CAA does not require a separate level of enforcement for a maintenance plan as a prerequisite to redesignation. The enforcement program approved for and applicable to the SIP as a whole also applies to the maintenance plan.

Redesignation to attainment for ozone does not suspend the implementation of the existing VOC Reasonably Available Control Technology (RACT) rules for the sources in the area. These rules will continue to be in place to provide for maintenance of the 1-hour ozone standard.

In 1980, EPA approved the Ohio ozone SIP as meeting all of the requirements of section 110, which

[1] Area-wide emissions projections for 2007 were not available for the maintenance plan.

included section 110(a)(2)(F), the predecessor of current section 110(a)(2)(E). See 40 CFR 52.1873. EPA has consistently interpreted section 107(d)(3) as permitting the Agency to rely on prior approvals of SIP provisions when reviewing redesignation requests. A memorandum to its Regional Offices from John Calcagni, Director of the Air Quality Management Division, dated September 4, 1992, (Calcagni Memorandum) describes procedures that EPA regions should use to evaluate requests to redesignate areas to attainment status. The memo states:

''An area cannot be redesignated if a required element of its plan is the subject of a disapproval * * *. However, this does not mean that earlier issues with regard to the SIP will be reopened. Regions should not reconsider those things that have already been approved and for which the Clean Air Act Amendments did not alter what is required.''

EPA does not need to reconsider the issue of whether the Ohio SIP meets section 110(a)(2)(E) requirements prior to redesignation. *Southwestern Pennsylvania Growth Alliance* v. *Browner,* 144 F.3d 984 (6th Cir. 1998).

Even if violations subsequently occur, this does not conclusively establish that state enforcement is so inadequate as to make the state enforcement program deficient under the Clean Air Act. EPA has not yet made such a finding, and even if the area is redesignated, EPA retains authority to make a finding of failure to implement under section 173(b) of the Clean Air Act or to require a SIP revision under section 110(a)(2)(H) if it concludes that state implementation and enforcement is deficient. The State would thus remain subject to EPA authority to improve its enforcement even after the area is redesignated. For purposes of redesignation, the area has a fully approved SIP.

In addition, EPA notes that in response to petitions filed by the commenter and others (also referred to in Comment 16), EPA is currently conducting a comprehensive review of the programs cited in those petitions as amended and supplemented. Any implementation deficiencies EPA finds in this review will be addressed and corrected in contexts apart from the redesignation procedure that is the subject of this rulemaking. See also Responses 16 and 24. EPA also recently advised the state of Ohio that, ''as amended by the Ohio Legislature and interpreted by Ohio's Attorney General, Ohio's Audit Privilege and Immunity Law should not present a barrier to continued authorization of federal environmental programs in Ohio.'' Letter dated June 18, 1999 from Steven A. Herman, Assistant Administrator to Betty D. Montgomery, Attorney General, State of Ohio, and Christopher Jones, Director, OEPA.

Comment 6: The commenter claims that the legal requirements for redesignation have not been met. The prerequisites for redesignating a nonattainment area to attainment are set forth in section 107(d)(3)(E) of the CAA, 42 U.S.C. 7407(d)(3)(E). Section 107(d)(3)(E)(i) of the CAA prohibits a redesignation to attainment unless EPA determines that the area has attained the ozone NAAQS. The commenter states that although EPA's Aerometric Information Retrieval System (AIRS) data does not show NAAQS violations in 1996–1998, EPA has not determined that the area has attained the standard, nor can it do so.

In its recent rulemaking adopting Tier 2 Motor Vehicle Emission Standards, EPA listed the Cincinnati-Hamilton area as ''certain or highly likely to require additional emission reductions in order to attain and maintain the 1-hour ozone NAAQS.'' 65 FR 6698, 6710 (February 10, 2000). The commenter alleges that EPA cannot determine that this area has attained the standard when it has explicitly found that the area requires additional emission reductions to attain and maintain the NAAQS. Further, the commenter states that EPA has not shown that emission reductions from the Tier 2 motor vehicle and gasoline sulfur standards will be substantial enough, or occur soon enough, to produce timely attainment and maintenance.

EPA's own projections, the commenter argues, undermine any claim that the recent absence of violations is due to permanent and enforceable emission reductions.

According to the commenter, moreover, any emissions benefits attributed to the Tier 2 standards and gasoline sulfur requirements must be offset by reductions that EPA's projections assumed would occur from the NO_X SIP call and other measures that cannot yet be credited because they are not enforceable as things stand now, and that EPA cannot approve the maintenance demonstration without first conducting new modeling to account for the foregoing concerns. Furthermore, any such modeling (or reanalysis of existing data) must be subject to full public notice and comment before final EPA action on the redesignation proposal.

Response 6: The Cincinnati-Hamilton area has monitored attainment of the 1-hour ozone standard for both the 1996–1998 and 1997–1999 time periods. The area is well monitored. There are 10 ozone monitors in operation throughout the seven county area. This monitoring clearly demonstrates that the air quality in the area has improved and that the area is attaining the 1-hour ozone standard. Also, see discussion for Table 3 in response below summarizing the air quality data from 1987 to 1999. The fact that attainment has lasted over a four-year period is strong evidence that it is attributable to emission reductions and not merely favorable meteorology.

Any emissions and ozone modeling system used to predict future ozone involves approximations and uncertainties at each stage: historical emission inventory estimation, growth and control projection, transport modeling, and photochemical modeling. Model predictions are best treated as indicators of risk, rather than as absolute forecasts. In the Tier 2 rulemaking, we used a regional ozone modeling system to predict ozone in many cities, as part of an interpretative process to characterize the risk that there would be nonattainment in a large and geographically broad number of areas. While ozone predictions and the characterization of the risk of nonattainment in individual areas was a step toward reaching a conclusion about risks across the group of areas, that characterization was not an Agency finding of violations for any specific area.

In the Tier 2 rulemaking, no area was characterized as being highly likely to require more emission reductions for attainment and maintenance unless the ozone modeling predicted a future exceedance and actual air quality data indicated nonattainment between 1995 and 1998. An area with monitored attainment in 1995 to 1998 was at worst characterized as having a moderate risk of future nonattainment, and only if it came within 10 percent of having a NAAQS violation in the 1995 to 1998 period. At the time, we used 1995–1998 (two three-year periods), so the Cincinnati-Hamilton area was included in the list of areas highly likely to need more reductions. The Tier 2 modeling did not have available to it the 1999 air quality data which shows that the area is continuing to attain the ozone standard. With the 1999 data, application of the same method would result in it being characterized as having only a moderate risk of needing additional emission reductions to avoid nonattainment sometime in the 2007 to 2030 period. A moderate risk of nonattainment is not inconsistent with EPA approval of the maintenance plan.

In the Tier 2 method, we also deferred to local attainment demonstration and weight of evidence conclusions wherever they existed and indicated attainment by 2007, moving even areas with both predicted 2007 exceedances and actual 1995–1998 violations to a ''significant risk'' list in those cases where we had proposed approval of an attainment demonstration, based on weight of evidence considerations, without requiring additional emission reductions. In the case of the Cincinnati-Hamilton area, there is no local modeling or weight of evidence analysis indicating future attainment, but there is data showing attainment now, and emission inventory projections that show that total NO_X and VOC emissions decline between 1996 and 2007. Actual local data showing attainment over four years, combined with a downward trend in total emissions, is an even stronger basis for not relying completely on the Tier 2 ozone modeling.

With respect to maintenance of the 1-hour ozone standard, the Tier 2 modeling showed a downward trend in ozone from 1996 to 2007 in the Cincinnati-Hamilton area, even without Tier 2 reductions. The Tier 2 reductions are the type of additional reductions that will help ensure maintenance for the next 10 years.

Comment 7: Pursuant to section 107(d)(3)(E)(ii) of the Clean Air Act, EPA cannot redesignate an area to attainment unless EPA ''has fully approved the applicable implementation plan for the area.'' The commenter contends that EPA has yet to fully approve the applicable implementation plan for the Cincinnati-Hamilton area. The commenter maintains that among other things, EPA has yet to fully approve the moderate area ozone SIP for this area and has also failed to fully approve the following specific SIP elements required by the Clean Air Act:

A. *Attainment demonstration:* The Clean Air Act requires the moderate area SIP submittal to include an attainment demonstration based on photochemical grid modeling or other analytical method determined by EPA to be at least as effective. 42 U.S.C. 7502(c)(1), (c)(6), 7511a(b)(1), 7511a(j). EPA has not approved an attainment demonstration for this area as required by the CAA.

B. *All Reasonably Available Control Measures (RACM):* EPA has not approved a demonstration that the SIP provides for implementation of all reasonably available control measures as expeditiously as practicable. 42 U.S.C. 7502(c)(1). The commenter argues that EPA has no authority to waive this requirement, which applies in addition to the requirement to demonstrate timely attainment.

C. *RACT:* The Clean Air Act requires the SIP to mandate Reasonably Available Control Technology for all VOC sources within the nonattainment area, including all sources covered by Control Technique Guideline (CTG) documents. 42 U.S.C. 7502(c)(1), 7511a(b)(2). EPA has not fully approved the SIP as meeting this requirement, and concedes that the requirement has not been met with respect to the Ohio portion of the nonattainment area. 65 FR 3636. The commenter argues that EPA is without authority to waive this explicit requirement for SIPs, and cannot deem it to be met by the state's commitment to adopt such measures in the future if needed as maintenance plan contingency measures. The CAA makes clear that RACT (including, specifically, RACT specified in Control Technique Guidelines (CTGs)) is a minimum level of control technology that must be included in all moderate area SIPs. It is not an optional control strategy that can be deferred until ''needed'' for attainment or maintenance. For these reasons, the commenter challenges the legal validity of EPA's prior guidance suggesting that unimplemented and ''unneeded'' RACT might be moved to an area's maintenance plan as a contingency measure.

Further, the commenter declares, even the prior guidance requires that RACT be fully adopted, submitted, and approved by EPA before redesignation: it does not allow a state to defer adoption of RACT requirements. The commenter contends that EPA's justification for making an exception to the requirement for full adoption here is irrational and meritless. The fact that the RACT rules are supposedly not needed for attainment and maintenance is a factor that was assumed in the original guidance as well, otherwise there would have been no basis for even considering the idea of allowing deferred implementation.

Equally irrelevant, says the commenter, is EPA's claim that greater emission reductions can be achieved by other contingency measures in the area's maintenance plan. The commenter argues that EPA was aware of this possibility as well at the time of its prior guidance, and that the purpose of requiring full adoption prior to redesignation was to provide assurance that this mandatory level of control already required in almost all other ozone nonattainment areas would no longer be deferred where additional emission reductions were clearly needed, and would be subject to immediate implementation (rather than requiring potentially years of state rulemaking and EPA reviews). As it is, Ohio has not committed to ever adopt the full range of mandated VOC RACT, only to consider it as one contingency measure option in the maintenance plan.

Response 7: The Cincinnati-Hamilton area has satisfied all applicable ozone requirements and has a fully approved ozone SIP. In acting on a redesignation request, EPA may rely on any prior SIP approvals plus any additional approvals it may perform in conjunction with acting on the redesignation. EPA is fully approving any remaining portions of the SIP that must be approved prior to redesignation in conjunction with this action. Therefore, the Ohio SIP is fully approved. See ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' John Calcagni, Director, Air Quality Management Division, September 4, 1992, page 3. The Calcagni memorandum allows for approval of SIP elements and redesignation to occur simultaneously, and EPA has frequently taken this approach in its redesignation actions.

In response to comment 7A on the attainment demonstration, an attainment demonstration is not required under EPA's attainment determination policy. EPA has explained at length in other actions its rationale for the reasonableness of that interpretation of the Clean Air Act and incorporates those explanations by reference here. See, for example, 61 FR 20458 (Cleveland-Akron-Lorain, Ohio)(May 7, 1996); 60 FR 36723 (July 18, 1995)(Salt Lake and Davis Counties, Utah); 60 FR 37366 (July 20, 1995), 61 FR 31832–33 (June 21, 1996)(Grand Rapids, MI).

EPA also reiterates its position set forth in the proposed rulemaking. Subpart 2 of part D of Title I of the CAA contains various air quality planning and SIP submission requirements for ozone nonattainment areas. EPA believes it is reasonable to interpret provisions regarding Reasonable Further Progress (RFP) and attainment demonstrations, along with certain other related provisions, so as not to require SIP submissions if an ozone nonattainment area subject to those requirements is monitoring attainment of the ozone standard (i.e., attainment of the NAAQS demonstrated with three consecutive years of complete, quality-assured, air quality monitoring data). EPA has interpreted the general provisions of subpart 1 of part D of Title I (sections 171 and 172) so as not to require the submission of SIP revisions

concerning RFP, attainment demonstrations, or section 172(c)(9) contingency measures. As explained in a memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, entitled ''Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard,'' dated May 10, 1995, EPA believes it is appropriate to interpret the more specific attainment demonstration and related provisions of subpart 2 in the same manner. (See *Sierra Club* v. *EPA,* 99 F.3d 1551 (10th Cir. 1996))

The attainment demonstration requirements of section 182(b)(1) are that the plan provide for ''such specific annual reductions in emissions * * * as necessary to attain the national primary ambient air quality standard by the attainment date applicable under the CAA.'' If an area has in fact monitored attainment of the relevant NAAQS, EPA believes there is no need for an area to make a further submission containing additional measures to achieve attainment. This is also consistent with the interpretation of certain section 172(c) requirements provided by EPA in the General Preamble to Title I. As EPA stated in the Preamble, no other measures to provide for attainment would be needed by areas seeking redesignation to attainment since ''attainment will have been reached'' (57 FR 13564). Upon attainment of the NAAQS, the focus of state planning efforts shifts to the maintenance of the NAAQS and the development of a maintenance plan under section 175A.

Similar reasoning applies to other related provisions of subpart 2. The first of these are the contingency measure requirements of section 172(c)(9) of the CAA. EPA has previously interpreted the contingency measure requirement of section 172(c)(9) as no longer being applicable once an area has attained the standard since those ''contingency measures are directed at ensuring RFP and attainment by the applicable date'' (57 FR 13564).

The state must continue to operate an appropriate air quality monitoring network, in accordance with 40 CFR part 58, to verify the attainment status of the area. The air quality data relied upon to determine that the area is attaining the ozone standard must be consistent with 40 CFR part 58 requirements and other relevant EPA guidance and recorded in EPA's AIRS.

EPA has reviewed the ambient air monitoring data for ozone (consistent with the requirements contained in 40 CFR part 58 and recorded in EPA's AIRS) for the Cincinnati-Hamilton moderate ozone nonattainment area from the 1996 through 1998 ozone seasons. This data is summarized in Table 3. Monitoring data for 1999 show the area continues to attain the 1-hour ozone NAAQS. On the basis of this review, EPA determines that the area has attained the 1-hour ozone standard during the 1996–98 period, as well as the 1997–1999 period (the most recent three-year time period of air quality monitoring data), and therefore is not required to submit an attainment demonstration and a section 172(c)(9) contingency measure plan and does not need any other measures to attain the 1-hour ozone standard.

In response to comments 7 B and C, no additional RACM controls beyond what are already required in the SIP are necessary for redesignation to attainment. The General Preamble (57 FR 13560, (April 16, 1992)) explains that section 172(c)(1) requires the plans for all nonattainment areas to provide for the implementation of RACM as expeditiously as practicable. EPA interprets this requirement to impose a duty on all nonattainment areas to consider all available control measures and to adopt and implement such measures as are reasonably available for implementation in the area's attainment demonstration. Because attainment is reached no additional measures are needed to provide for attainment.

The suspension of the attainment demonstration requirements pursuant to our determination of attainment includes the section 172(c)(1) RACM requirements as well. The General Preamble treats the RACM requirements as a ''component'' of an area's attainment demonstration. See reference above. Thus, the suspension of the attainment demonstration requirement pursuant to our determination of attainment applies to the RACM requirement, since it is a component of the attainment demonstration.

As discussed in the proposed rulemaking, Ohio has completed adoption of stationary source RACT requirements for the Cincinnati-Hamilton moderate ozone nonattainment area. EPA has approved these RACT regulations in prior rulemakings. See rulemakings for Ohio dated April 25, 1996 (61 FR 18255), September 7, 1994 (59 FR 46182) and October 23, 1995 (60 FR 54308). The requirement for RACT based on new CTGs in Ohio is satisfied by the listing of new CTGs in the maintenance plan as contingency measures. See discussion in EPA's proposed rulemaking on this action. EPA's rationale has been explained at length in the Grand Rapids, Michigan redesignation actions of proposed and final rulemakings dated April 2, 1996 (61 FR 14522), June 21, 1996 (61 FR 31833–31834, 31843–31847), and is incorporated by reference here.

Ohio has demonstrated that the Cincinnati-Hamilton area does not require the new CTG RACT rules for either attainment or maintenance. If EPA were to require the State to fully adopt these rules prior to redesignation, the State would still be entitled to have the rules become a part of the contingency measures in the maintenance plan upon approval of the redesignation. EPA's policy allows that even those measures which have been adopted may be moved into the area's maintenance plan as contingency measures if they are not yet implemented and not necessary for maintenance of the standard. September 17, 1993 Memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, entitled, ''SIP Requirements for Areas Submitting Requests for Redesignation to Attainment'', Detroit redesignation with respect to Stage I (March 7, 1995, 60 FR 12459).

Consequently, requiring full adoption prior to redesignation would not lead to implementation of the measures, and would not impose a minimum level of technology as the commenter suggests. The only difference between the commenter's approach and EPA's is that EPA, as in the case of Grand Rapids, is permitting Ohio to place a commitment to adopt measures, rather than fully adopted measures, in its maintenance plan. This approach is fully consistent with EPA's longstanding practice, set forth in the September 1992 Calcagni memorandum, that in general, contingency measures need not be fully adopted. EPA believes that this approach is also consistent with the requirements of the CAA.

EPA has previously addressed the issue of whether Clean Air Act requirements, such as RACT, must be implemented after an area has been redesignated, and whether EPA's longstanding policy of allowing states to convert mandatory control measures to contingency measures is authorized. See, for example, redesignation of Detroit dated March 7, 1995 (60 FR 12459, 12470). The CAA contains many requirements that States must adopt certain measures, including RACT, specifically for nonattainment areas. Those requirements do not by their own terms continue to apply to an area after it has been redesignated to attainment.

Moreover, nothing in section 175A itself suggests that these requirements must continue to be met in redesig-

nated areas. Section 175A(d) is specifically and clearly applicable to contingency provisions and their inclusion in a section 175A maintenance plan. Section 175A(d) establishes that SIP revisions submitted under section 175A must contain contingency provisions, as may be necessary, to assure that the state will promptly correct any violation of the ozone NAAQS that occurs after redesignation to attainment. It further requires that these contingency provisions include a requirement for the state to implement all measures with respect to the control of ozone precursor emissions that were in the nonattainment SIP before the area was redesignated. This provision clearly demonstrates that section 175A(d) contemplates that there may be unimplemented control measures in the SIP prior to redesignation that will be shifted into the maintenance plan as contingency measures. Nothing in section 175A suggests that the measures that may be shifted into the contingency plan do not include programs mandated by the Act when the area was designated nonattainment. As section 175A(a) requires that measures be adopted and implemented to ensure maintenance, it indicates that measures may not be converted to contingency provisions unless the State demonstrates that the standard will be maintained in the absence of the implementation of such measures. Ohio has shown that it can maintain the standard without the unimplemented measures. Thus EPA believes that its policy with respect to allowing measures to be placed into the contingency plan meets the requirements of the Act.

Comment 8: The commenter asserts that EPA has not determined that the motor vehicle emissions budget for the Cincinnati-Hamilton area SIP is adequate for attainment (and maintenance), and states that the CAA and EPA rules and guidance preclude EPA from approving an attainment demonstration SIP unless the SIP includes a motor vehicle emissions budget that EPA determines to be adequate.

Response 8: The commenter is correct that EPA rules and guidance preclude the final approval of an attainment demonstration, maintenance plan or other control strategy SIP before the mobile source emission budget in the plan meets the adequacy criteria in the transportation conformity rule. EPA posted the Ohio maintenance plan SIP to EPA's adequacy web site on January 7, 2000 and the Kentucky maintenance plan SIP to the adequacy web site on November 29, 1999.

The adequacy web site at *www.epa.gov/oms/transp/conform/adequacy.htm* is available to the public to allow notice and comment on the adequacy of mobile source emission budgets in submitted control strategy SIPs. The comment period on the maintenance plan SIPs has closed without receipt of any negative comments. Letters of adequacy have been issued and will be posted on the web site. EPA found the mobile source emission budgets adequate on April 27, 2000, and May 24, 2000, for Ohio and Kentucky respectively.

As a general matter, it should be noted that EPA also proposes and approves transportation conformity budgets through the regular **Federal Register** notice and comment process. The public therefore has several opportunities to comment on the approvability of mobile source emission budgets: First, at the state level during the state public comment period on the SIP; second at the federal level during the adequacy posting of the submitted SIP; and third during the **Federal Register** proposed approval of the SIP with mobile source budgets. In some cases, the proposed approval and the adequacy posting may occur at the same time or concurrently. The adequacy and approvability of the mobile source budget is evaluated during this time frame and before the final approval of the control strategy SIP with approved budgets.

The public should note, however, that not all submitted SIP budgets will be posted on the adequacy web site and go though the adequacy process, although all budgets must meet the adequacy criteria in the transportation conformity rule before being approved. The adequacy process is available so that budgets can be found adequate and be used for conformity purposes before the SIP is approved.

If a control strategy SIP with a budget has already been approved for an area and a new SIP with a new budget is submitted that covers the same requirements and time frame as the approved SIP, then the new SIP would not be posted for adequacy because the new submitted budget could not replace the approved budget without full **Federal Register** notice and comment. For example, when Ohio wants to allocate the safety margin in a maintenance plan to the mobile source emissions budget in the current maintenance plan, the new maintenance plan budget would not need to be posted to the adequacy web site because an approved maintenance plan budget would already be in place. The new SIP submittal with the new budget does, however, go through full notice and comment rulemaking before the budget can be used for transportation conformity.

Comment 9: The commenter argues that the SIP does not include conformity procedures as required by the CAA, and that EPA has no authority whatsoever to waive this mandatory requirement for SIPs. The commenter contends that the CAA allows redesignation to attainment only where EPA has fully approved the implementation plan and only where the state ''has met all requirements applicable to the area'' under section 110 and part D.

Response 9: The State of Ohio and the State of Kentucky have met the statutory requirement for submitting approvable general conformity procedures. EPA approved the Ohio general conformity rules effective on May 10, 1996 (61 FR 9644). EPA approved the Kentucky general conformity rules effective on July 27, 1998 (63 FR 40044).

Section 176(c) provides that state conformity revisions must be consistent with Federal conformity regulations that the CAA requires EPA to promulgate. The Federal general conformity regulations were finalized on November 30, 1993, and the Federal transportation conformity regulations were finalized on November 24, 1993. The Federal general conformity regulations have remained the same since that time, but the Federal transportation conformity regulations have been amended several times since 1993.

EPA conditionally approved the Ohio transportation conformity rules on May 16, 1996 (61 FR 24702). Ohio met the condition of the approval by submitting rule changes within the specified one year time frame. The Federal transportation conformity regulations were amended on August 15, 1997 (40 CFR parts 51 and 93 Transportation Conformity Rule Amendments: Flexibility and Streamlining). Ohio submitted new transportation conformity rules on October 6, 1999, in response to the 1997 changes to the Federal transportation conformity regulations. However, the Ohio rules will need to be revised again due to the March 2, 1999 court decision (*Environmental Defense Fund* v. *Environmental Protection Agency,* U.S. Court of Appeals District of Columbia Circuit, No. 97–1637) which rescinded several sections of the Federal transportation conformity rule and asked EPA to revise several sections of the Federal rule. Kentucky submitted transportation conformity rules in 1994,

but EPA has not acted upon the rules and the rules must be revised to be consistent with the amendments and court rulings.

EPA believes it is reasonable to interpret the conformity requirements as not applying for purposes of evaluating the redesignation request under section 107(d). The rationale for this is based on a combination of two factors. First, the requirement to submit SIP revisions to comply with the conformity provisions of the Clean Air Act continues to apply to areas after redesignation to attainment, since such areas would be subject to a Section 175A maintenance plan. Second, EPA's Federal conformity rules require the performance of conformity analyses in the absence of federally approved state rules. Therefore, because areas are subject to the conformity requirements regardless of whether they are redesignated to attainment and must implement conformity under Federal rules if state rules are not yet approved, EPA believes it is reasonable to view these requirements as not applying for purposes of evaluating a redesignation request. See, for example Grand Rapids redesignation at 61 FR 31835–31836 (June 21, 1996).

EPA has explained its rationale and applied this interpretation in numerous redesignation actions. See, Tampa, Florida and Cleveland-Akron-Lorain redesignations 60 FR 52748 (December 7, 1995), and 61 FR 20458 (May 7, 1996), respectively. Consequently, EPA may approve the ozone redesignation request for the Cincinnati-Hamilton area notwithstanding the lack of a fully approved conformity SIP.

Comment 10: The commenter asserts that neither the states nor EPA have shown that air quality improvements are due to permanent and enforceable emission reductions, as required by 42 U.S.C. 7407(d)(3)(E)(iii). The commenter takes issue with the finding that this criteria is met because the states have adopted measures that have produced some emission reductions. The commenter believes EPA has not demonstrated that these reductions are responsible for the area's improved air quality or the absence of violations, claiming that the only way to reliably make such a showing would be through photochemical grid modeling. No such modeling is presented or discussed in this proposal.

The commenter states that given the complex chemistry and meteorology of ozone formation, the combination of NO_x and VOC emission reductions that might be attributable to the cited measures could just as easily lead to increases in ozone concentrations. The lack of violations in 1996–1998, the commenter states, could just as well be due to weather patterns or changes in transport of ozone precursors. Without modeling to determine the actual impact of adopted and enforceable controls, the commenter finds EPA's claim to be speculative.

Response 10: We disagree with the commenter. We believe that photochemical grid modeling is not necessary to show that the improvement in air quality is due to permanent and enforceable emissions reductions. Our policy does not specify that photochemical grid modeling must be done in ozone nonattainment areas to meet this requirement. See General Preamble for the Interpretation of Title I of the CAA Amendments of 1990, 57 FR 13496 (April 16, 1992), supplemented at 57 FR 18070 (April 28, 1992); ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' John Calcagni, Director, Air Quality Management Division, September 4, 1992; ''State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) on or after November 15, 1992,'' Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993; and ''Use of Actual Emissions in Maintenance Demonstrations for Ozone and CO Nonattainment Areas,'' D. Kent Berry, Acting Director, Air Quality Management Division, November 30, 1993.

Our policy allows an area to meet this requirement by showing how its ozone precursor emissions changed due to permanent and enforceable emissions reductions from when the area was not monitoring attainment of the 1-hour ozone NAAQS to when it reached attainment.

Reductions in ozone precursor (volatile organic compounds and nitrogen oxides) emissions have brought many areas across the country into attainment. EPA has approved many ozone redesignations showing decreases in ozone precursor emissions resulting in attainment of the ozone standard. See redesignations for Charleston (59 FR 30326, June 13, 1994; 59 FR 45985, September 6, 1994), Greenbrier County (60 FR 39857, August 4, 1995), Parkersburg (59 FR 29977, June 10, 1994; 59 FR 45978, September 6, 1994), Jacksonville/Duval County (60 FR 41, January 3, 1995), Miami/Southeast Florida (60 FR 10325, February 24, 1995), Tampa (60 FR 62748, December 7, 1995), Lexington (60 FR 47089, September 11, 1995), Owensboro (58 FR 47391, September 9, 1993), Indianapolis (59 FR 35044, July 8, 1994; 59 FR 54391, October 31, 1994), South Bend-Elkhart (59 FR 35044, July 8, 1994; 59 FR 54391, October 31, 1994), Evansville (62 FR 12137, March 14, 1997; 62 FR 64725, December 9, 1997), Canton (61 FR 3319, January 31, 1996), Youngstown-Warren (61 FR 3319, January 31, 1996), Cleveland-Akron-Lorain (60 FR 31433, June 15, 1995; 61 FR 20458, May 7, 1996), Clinton County (60 FR 22337, May 5, 1995; 61 FR 11560, March 21, 1996), Columbus (61 FR 3591, February 1, 1996, Kewaunee County (61 FR 29508, June 11, 1996; 61 FR 43668, August 26, 1996), Walworth County (61 FR 28541, June 5, 1996; 61 FR 43668, August 26, 1996), Point Coupee Parish (61 FR 37833, July 22, 1996; 62 FR 648, January 6, 1997), and Monterey Bay (62 FR 2597, January 7, 1997). Most of the areas that have been redesignated to attainment for the 1-hour ozone standard have continued to attain it. Areas that are not maintaining the 1-hour ozone standard have a maintenance plan to bring them back into attainment.

Reductions in ozone precursor emissions have been shown in photochemical grid modeling to reduce ambient ozone concentrations in areas across the country. Between 1990 and 1996 area-wide VOC and NO_X emissions in the Cincinnati-Hamilton area decreased by 18% and 6%, respectively. These emissions reductions are due to the Federal Motor Vehicle Emissions Control Program, fleet turnover of automobiles, implementation of Stage II vapor recovery program, implementation of VOC RACT, Federal requirements for lower Reid vapor pressure gasoline, use of reformulated gasoline in Kentucky, ceased operation and improved technology at facilities in Kentucky, and partial implementation of vehicle emission testing (E-Check) in Ohio.

Additional programs have been implemented in Kentucky since the 1996 attainment year. These programs include Stage II vapor recovery, vehicle emission testing program, and increased rule effectiveness of Stage I vapor control. Additional Federal rules such as architectural coatings, traffic paints, auto body refinishing, and commercial/consumer products rules have become effective.

Between 1990 and 1999 area-wide VOC and NO_X emissions decreased by 24% and 9%, respectively. Ozone air quality monitoring data show that the

design value [2] changed from 0.157 parts per million (during the 1987–1989 time period) to 0.124 parts per million (during the 1996–1998 time period). This shows that reductions in ozone concentrations correspond to the reduction in ozone precursors emissions in the area.

The commenter claims that the combination of NO_X and VOC emissions reductions could just as easily have led to increases in ozone. This claim is shown to not be true by the actual monitoring data collected in the area showing that ambient ozone concentrations have dropped when this combination of ozone precursor reductions occurred. In other metropolitan areas, different levels of VOC and NO_X reductions have also resulted in attainment. See areas listed above in first part of this response. The Cincinnati-Hamilton area's decrease in ozone levels is consistent with what other areas have experienced. The commenter has not provided data showing that decreases in ozone precursor emissions have led to higher levels of ozone.

The commenter claims that the lack of violations during 1996–1998 could just as well be due to weather patterns or changes in transport of ozone precursors, but does not supply any evidence to support this conclusion. We use a three year period of air quality to account for changes in weather conditions. Weather conditions have a substantial effect on ozone concentrations, both in terms of increasing ozone and decreasing ozone. However, this effect is not controllable and EPA uses a three year average to account for changes in meteorology. In the case of the Cincinnati-Hamilton area, the fact that the 1997–1999 time period also shows that the area continues to be in attainment of the ozone standard increases our confidence that weather is not a controlling factor in the area's attainment.

Indeed, weather data from the National Oceanic and Atmospheric Administration shows that during the period at issue, weather conditions were not unusually favorable toward low ozone concentrations in the Cincinnati-Hamilton area. This data is summarized in Tables 1 and 2.

[2] The design value is typically the fourth highest ozone concentration recorded at a monitor over a three year period. This value is calculated for each monitor and the highest value is the design value for the area.

TABLE 1. RANKED TEMPERATURE FOR MAY TO SEPTEMBER PERIODS VERSUS 1895–1998 LONG-TERM AVERAGE

Year	Temperature rank for northern Kentucky	Temperature rank for southwest Ohio
1987	96	94
1988	62	80
1989	13	18
1993	52	58
1994	20	28
1995	67	64
1996	36	35
1997	8	6
1998	85	88
1999	78	83

TABLE 2. COMPOSITE TEMPERATURE ANOMALIES FOR MAY TO SEPTEMBER PERIODS VERSUS 1950–1995 AVERAGE

Three-year period of May-September data	Temperature anomaly for northern Kentucky	Temperature anomaly for southwest Ohio
1987–1989	0.72	0.49
1993–1995	0.21	−0.02
1995–1997	−0.30	−0.81
1996–1998	−0.02	−0.56
1997–1999	0.64	0.07

Table 1 shows the rank of the average temperatures over the May to September period for certain years compared to data from 1895 to 1998. A rank of 104 is given to the hottest year and a rank of 1 is given to the coolest year. Table 2 shows how the average temperature (in degrees Fahrenheit) over three year periods compared to a long-term average of temperature. This shows that for the 1996–1998 time period, average temperatures in Kentucky were close to the long-term average and Ohio's temperatures were only half a degree below average. The 1996–1998 period had slightly warmer average temperatures than the 1995–1997 time period and slightly cooler average temperatures than the 1993–1995 time period. During the 1995–1997 and 1993–1995 time periods, monitoring data show that the area was in violation of the 1-hour ozone standard. During the 1997–1999 time period, temperatures averaged about a half degree above average in Kentucky and were average in Ohio. Ozone monitoring data for this time period show that the area was in attainment of the 1-hour ozone standard. These temperatures are comparable to the average during the 1987–1989 time period used to classify the area as a moderate ozone nonattainment area under the Clean Air Act.

Table 1 shows how the temperature rankings have varied from year to year. Note that 1998 and 1999 are ranked higher than 1995, when the area last experienced two exceedances at a monitor during a single year.

This data shows that the weather conditions were not unusually favorable towards lower levels of ozone, and that the area has continued to attain the 1-hour standard even with weather that was slightly warmer than average and comparable to when the area was originally classified as moderate nonattainment. The combination of this analysis of the meteorological conditions in conjunction with the existence of permanent and enforceable emission reductions demonstrates that the improvement in air quality is due to permanent and enforceable emission reductions.

In light of this information, EPA believes it is reasonable not to require photochemical grid modeling. Three-year averaging addresses variations in meteorological conditions, and the commenter has presented no evidence that the three year attainment period was unusually favorable. We have looked at the weather and determined that it was not unusually favorable. It is important to note that, redesignation is not intended as an absolute guarantee that the area will never monitor future violations. This is what maintenance plan contingency measures are designed to address and correct.

Comment 11: The commenter contends that the plan does not demonstrate maintenance for ten years as required by sections 107(d)(3)(E)(iv) and 175A of the Clean Air Act. EPA proposes to find maintenance not on the basis of modeling, as required by the CAA, but on the presumption that the area will always be in attainment if emissions remain at or below estimated 1996 levels. The commenter states that such a presumption is not rationally supportable. The area violated the NAAQS in the 1995–1997 period. Therefore, the commenter reasons, holding emissions to 1996 levels does not assure attainment.

The commenter avers that, even assuming the emission reductions predicted by the states for 1999 and subsequent years, there is no technical analysis in the record demonstrating that those emission levels will assure maintenance. Such a demonstration requires photochemical grid modeling that accounts for the kinds of weather conditions and transport impacts experienced on appropriately chosen design days. See 65 FR 6711 (rejecting

use of rollback analysis for making attainment and nonattainment predictions). According to the commenter, until EPA approves such a modeling demonstration, it cannot approve the maintenance plan.

The commenter argues that the history of this nonattainment area shows that EPA cannot rationally assume that emission levels correlate with ozone levels in a linear or consistent fashion; the area did not violate the ozone NAAQS in the 1992–94 period, but did subsequently violate the NAAQS when VOC emissions were supposedly lower.

Response 11: We believe that the monitoring shows that the current level of emissions is adequate to keep the area in attainment. Table 3 summarizes the number of exceedances at each monitor in the area from 1987 through 1999. This Table shows the number of expected exceedances for each monitor for each year. A monitor has to measure more than 1.0 average expected exceedances over a three year period to cause a violation of the 1-hour ozone standard.[3] See 40 CFR 50.9 and Appendix H. The Table shows that the number of exceedances have decreased from what was monitored in the late 1980's. The violation monitored during the 1995–1997 time period was just slightly above the ozone standard and significant reductions in emissions have occurred to bring this level down to attainment. Likewise, emissions have decreased from the 1992–1994 time period, increasing the likelihood that the area will maintain the 1-hour ozone standard.

Since 1996 all of the monitors in operation recorded 1.0 exceedance or less each year. This averages out to less than 1.0 exceedance on average per year. This is clearly not a violation of the 1-hour ozone standard. The last time a monitor recorded more than 1.0 exceedance was in 1995, when two exceedances were recorded at two of the monitoring sites in the area. The number of monitored exceedances has decreased as the amount of emissions has decreased.

TABLE 3.—1-HOUR OZONE NAAQS EXPECTED EXCEEDANCES IN THE CINCINNATI-HAMILTON, OHIO-KENTUCKY AREA FROM 1987 TO 1999.

Site/County	87	88	89	90	91	92	93	94	95	96	97	98	99
Middletown/Butler	0.0	6.5	0.0	2.0	0.0	0.0	1.0	0.0	2.0	1.0	1.0	0.0	1.0
Hamilton/Butler	0.0	4.1	0.0	0.0	0.0	0.0	1.0	0.0	1.0	0.0	0.0	0.0	1.0
389 Main St./Clermont	2.0	10.4	0.0	0.0	0.0	0.0	0.0	.....	.....	.....	.....	.....	.....
4430 SR 222/Clermont	.....	.....	.....	.....	.....	.....	.....	1.0	1.0	0.0	0.0	1.0	1.0
11590 Grooms Road/Hamilton	2.0	5.0	1.0	1.0	4.0	0.0	0.0	0.0	0.0	0.0	1.0	1.0	0.0
6950 Ripple Road/Hamilton	2.0	0.0	0.0	1.0	1.1	0.0	0.0	0.0	1.0	0.0	0.0	0.0	0.0
Cincinnati (0019)/Hamilton	3.0	5.0	1.2	0.0	.....	.....	.....	.....	.....	.....	.....	.....	.....
Cincinnati (0037)/Hamilton	.....	.....	.....	0.0	0.0	0.0	0.0	0.0	1.0	0.0	0.0	0.0	.....
Cincinnati (0040)/Hamilton	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	0.0
Lebanon (416 S. East St.)/Warren	2.0	8.2	0.0	4.0	3.0	0.0	0.0	2.0	2.0	0.0	.....	.....	.....
Warren	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	1.0	1.0	0.0
Boone	0.0	2.1	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Campbell	2.0	7.0	1.1	0.0	0.0	0.0	1.0	0.0	0.0	1.0	0.0	0.0	0.0
Kenton	2.0	14.1	0.0	0.0	0.0	0.0	0.0	0.0	1.0	1.0	0.0	1.0	0.0

The area has monitored attainment for both the 1996–1998 and 1997–1999 time periods. This shows that the current level of emissions is adequate to keep the area in attainment during weather conditions as in past years associated with higher levels of ozone. In addition, the CAA does not presume that the area will always be in attainment. The CAA provides that if the area were to violate the 1-hour ozone standard, then the contingency measures in the maintenance plan would be triggered. This would reduce the ozone precursor emissions and bring the area back into attainment.

Our policy allows areas to prepare an attainment emissions inventory corresponding to when the area monitored attainment. It also allows areas to project maintenance by showing that future emissions will stay below the attainment emissions inventory.[4] The attainment inventory estimates 1996 emissions, which is within the 1996–1998 time period of attainment. Emissions are projected to remain below this level for the next 10 years.

Holding emissions at or below the level of the attainment inventory is adequate to reasonably assure continued maintenance of the 1-hour ozone standard. Reductions in ozone precursor emissions have been shown in photochemical grid modeling to reduce ambient ozone concentrations in areas across the country. Photochemical grid modeling is not needed to show that the area has attained or will maintain the standard. The air quality will be maintained by keeping below the attainment emissions level, continuing to monitor ozone levels, and having maintenance plan contingency measures available. Reductions in ozone precursor emissions have brought many areas across the country into attainment.

Many of the ozone areas for which EPA has approved ozone redesignations have used an emissions inventory approach to demonstrate maintenance. The majority of areas have continued to maintain the 1-hour ozone standard using that approach. See redesignations cited in Response 10. Emissions inventories can be used to project maintenance of the 1-hour ozone standard. As previously stated, if the attainment level of emissions is not adequate to protect against a violation and the area monitors a violation, then the contingency measures in the maintenance plan would be triggered to bring the area back into attainment. There are ozone monitors located in the Cincinnati-Hamilton area to ensure that the area's air quality remains below the level set by the 1-hour ozone standard.

The comment that EPA should not assume that ''emission levels correlate with ozone levels in some sort of linear

[3] Expected exceedances take into actual monitored exceedances and account for days where there is missing data or the data was invalidated.

[4] See ''Use of Actual Emissions in Maintenance Demonstrations for Ozone and CO Nonattainment Areas,'' D. Kent Berry, Acting Director, Air Quality Management Division, November 30, 1993.

or consistent fashion'' is in effect a recommendation that future maintenance be tested assuming meteorological conditions that are more conducive to ozone formation than the conditions that have prevailed in 1996 to 1999. No other factor is known to introduce an inconsistency between ozone and emissions. The commenter protests that the area has not submitted a maintenance demonstration based on ozone modeling, and implicitly urges that the modeling assume 1995-type conditions, or worse.[5] However, if a prospective maintenance demonstration were performed with an ozone photochemical model following EPA guidance, the modeling would be allowed to use episode days from the 1996–1998 period, not 1995. It is highly likely, if not certain, that the outcome would be a conclusion that attainment will be preserved through the required 10-year period. EPA believes this modeling guidance is reasonable and appropriate.

Comment 12: EPA has not fully approved the Stage II vapor recovery program in the Ohio portion of the nonattainment area. EPA partially disapproved the program because it can be suspended at the discretion of the Ohio EPA Director without obtaining EPA approval. 59 FR 52911 (October 20, 1994). The commenter contends that because of this discretionary suspension provision, EPA cannot credit any emissions reductions to the Ohio Stage II program, either with respect to the attainment demonstration or the maintenance demonstration.

Response 12: EPA does not agree with the conclusion of the comment. EPA can give credit for the emissions reductions because the Stage II program has been implemented in all areas where it was required in the state, including the Cincinnati-Hamilton area. EPA partially approved the Ohio Stage II plan because it contained all of the required criteria for an approvable Stage II plan. Furthermore, because EPA approved the program into the state SIP, EPA has the authority to enforce the program provisions, if necessary.

The director's discretion provision, which states that the OEPA Director may suspend the program at will, was disapproved by EPA. EPA's initial concern regarding this provision was over the potential for the OEPA Director to not implement any one or all phases of the program without first seeking EPA approval. The Ohio EPA Director, however, has not chosen to suspend the Stage II program in the Cincinnati-Hamilton area. EPA has also established through discussions with OEPA enforcement staff that the Stage II program is in operation in the Ohio portion of the Cincinnati-Hamilton area and has been for a number of years.

EPA has reviewed the state's efforts to implement the Stage II program in detail at 62 FR 61241 (November 17, 1997). We believe that Ohio understands the need for VOC emission reductions from all source categories and has implemented the Stage II program along with other VOC reduction measures to meet not only the spirit but also the letter of the ozone attainment plan. Since this measure is part of the Federally approved SIP and is being implemented, it is providing creditable emissions reductions contributing to attainment.

The Memorandum entitled, ''State Implementation Plan Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) NAAQS on or after November 15, 1992,'' Michael Shapiro, Acting Assistant Administrator for Air and Radiation, dated October 14, 1994, states:

''Stage II vapor recovery remains an applicable requirement for moderate ozone nonattainment areas until EPA promulgates on-board vapor recovery regulations. Section 202(a)(6) of the Act provides that once onboard regulations are promulgated, the Stage II regulations required under section 182(b)(3) are no longer applicable for moderate ozone nonattainment areas. Therefore, final redesignation for a moderate nonattainment area that occurs after EPA's onboard regulations are promulgated does not have to include a Stage II SIP control program.''

On October 20, 1994, EPA partially approved and partially disapproved Ohio's SIP revision for implementation of the Stage II program (59 FR 52911). As stated in that rulemaking action, with the exception of paragraph 3745–21–09(DDD)(5), EPA considers Ohio's Stage II program to fully satisfy the criteria set forth in the EPA guidance document for such programs entitled, ''Enforcement Guidance for Stage II Vehicle Refueling Control Programs.'' EPA promulgated onboard rules on April 6, 1994 (59 FR 16292); therefore, pursuant to section 202(a)(6) of the CAA, Stage II is no longer required, and a fully approved program is not a prerequisite for redesignation. However, the state has opted to include reductions in VOCs from the Stage II program as part of its maintenance plan. Only those Stage II provisions previously approved by EPA are part of the Cincinnati-Hamilton area maintenance plan. See also similar determinations by EPA in the redesignations of Cleveland (60 FR 31433, June 15, 1995; and 61 FR 20458, May 7, 1996) and Dayton (60 FR 22289, May 5, 1995).

Comment 13: The commenter argues that under 42 U.S.C. 7410(a)(2)(D)(i) the SIP must include provisions to prohibit emissions that will contribute significantly to nonattainment in, or interfere with maintenance by, any other state. The commenter asserts that EPA has specifically determined that emissions from Ohio contribute significantly to ozone nonattainment in downwind states, and has issued a SIP call to require additional NO_X controls in the Ohio SIP to address this problem. Ohio has not yet adopted the required SIP provisions. The commenter claims that EPA seeks to gloss over this failure by noting that the NO_X SIP call has been stayed by the D.C. Circuit. The commenter complains that EPA has proposed to allow various Ozone Transport Region States to claim credit for SIP call reductions, notwithstanding the stay. In the Washington, D.C. area, for example, the commenter asserts that EPA is proposing to approve an attainment demonstration that relies heavily on ozone reductions that will follow from compliance with the NO_X SIP call. The commenter argues that in that context, EPA discounted the significance of the court ordered stay, asserting that the SIP call rule was still on the books, and therefore must be given credence. 64 FR 70460, 70464, 70464–70465 (1999). The commenter states that EPA cannot rationally allow downwind states to claim credit for SIP call reductions, while allowing upwind states to avoid adoption of measures required for such reductions.

Response 13: For a number of independent reasons, we view submissions under the NO_X SIP call as not being applicable requirements for purposes of evaluating a redesignation request. First, because the NO_X SIP call has been stayed, submissions under it were not due at the time the redesignation requests were submitted. Established EPA policy holds that when evaluating a redesignation request, EPA does not consider whether the state has met requirements that come due after submittal of a complete redesignation request. See page 4 of the Calcagni Memorandum. This ground alone would be dispositive. EPA also believes that even if the revisions under the NO_X SIP call were due prior to the redesignation requests, other grounds support considering these revisions to not be applicable requirements.

[5] Table 1 shows that the average temperature conditions in the area were worse in 1998 and 1999 than in 1995.

The requirement to submit revisions under the NO_X SIP call continues to apply to areas after redesignation to attainment. Therefore, the state remains obligated to submit these revisions even after redesignation, and would risk sanctions for failure to do so. While redesignation of an area to attainment enables the area to avoid further compliance with the requirements of section 110 and part D that are linked with an area's nonattainment status, the NO_X SIP call requirements apply to both nonattainment and maintenance (attainment) areas. The NO_X SIP call submissions are required not to address air quality in the designated Cincinnati-Hamilton ozone nonattainment area, but to reduce emissions affecting downwind areas. They are not requirements linked with a particular nonattainment area's designation and classification.

The requirements linked with a particular area's designation and classification are the requirements that EPA believes are the relevant measures to evaluate in reviewing a redesignation request. Thus, even if it had been due prior to the filing of the redesignation request, the NO_X SIP call submission requirement could be construed not to be an applicable requirement for purposes of redesignation. This policy is consistent with EPA's existing redesignation policies regarding conformity and oxygenated fuels requirements, as well as with section 184 ozone transport requirements. See Reading, Pennsylvania proposed and final rulemakings, 6l FR 53174–53176 (October 10, 1996), 62 FR 24826 (May 7, 1997); Cleveland-Akron-Lorain, Ohio final rulemaking 61 FR 20458 (May 7, 1996); and Tampa, Florida final rulemaking at 60 FR 62748, 62741 (December 7, 1995).

Comment 14: The commenter states that the CAA explicitly requires the SIP to include a preconstruction permit program for new major sources and modifications within the nonattainment area (NSR program). 42 U.S.C. 7410(a)(2)(C), 7502(c)(4)&(5), 7503, 7511, 7511(a)(2)(C), and (b)(5). EPA has not fully approved an NSR program for the Ohio portion of the nonattainment area. According to the commenter, this is not an optional program that EPA can simply waive if not ''needed'' for attainment. The Clean Air Act sets out the NSR mandate as an explicit SIP requirement, in addition to the requirement for demonstrating timely attainment.

Response 14: EPA believes that the Cincinnati-Hamilton area may be redesignated to attainment notwithstanding the lack of a fully-approved NSR program meeting the requirements of the 1990 Clean Air Act amendments. This view has been set forth by EPA in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled ''Part D New Source Review (part D NSR) Requirements for Areas Requesting Redesignation to Attainment.'' Also, see Grand Rapids, Michigan redesignation (61 FR 31834–31837, June 21, 1996). This policy has also been applied in redesignations of Youngstown-Warren, Columbus, Canton, Cleveland-Akron-Lorain, Dayton-Springfield, Toledo, Preble County, Columbiana County, and Clinton County, Ohio, as well as Detroit, Michigan.

EPA believes that its decision not to insist on a fully approved NSR program as a prerequisite to redesignation is justifiable as an exercise of the Agency's general authority to establish de minimis exceptions to statutory requirements. See *Alabama Power Co.* v. *Costle,* 636 F.2d 323, 360–61 (D.C. Cir. 1979). Under *Alabama Power Co.* v. *Costle,* EPA has the authority to establish de minimis exceptions to statutory requirements where the application of the statutory requirements would be of trivial or no value environmentally. In this context, the issue presented is whether EPA has the authority to establish an exception to the requirements of section 107(d)(3)(E) that EPA must fully approve a SIP meeting all of the requirements applicable to an area under section 110 and part D of title I of the Clean Air Act before redesignating the area. Plainly, the NSR provisions of section 110 and part D are requirements that were applicable to the Cincinnati-Hamilton area at the time of the submission of the request for redesignation. Thus, on its face, section 107(d)(3)(E) would seem to require that the State submit and EPA fully approve a part D NSR program meeting the requirements of the Clean Air Act before an area could be redesignated to attainment. Under EPA's de minimis authority, however, the agency may establish an exception to an otherwise plain statutory requirement if its fulfillment would be of little or no environmental value. Therefore, it is necessary to determine what would be achieved by insisting that there be a fully-approved part D NSR program in place prior to the redesignation of the Cincinnati-Hamilton area.

For the following reasons, EPA believes that requiring the adoption and full approval of a part D NSR program prior to redesignation would not be of significant environmental value in this case. Ohio assumed that NSR would not apply after redesignation to attainment, and therefore, assumed source growth factors based on projected growth in the economy and in the area's population. Ohio has demonstrated that maintenance of the ozone NAAQS will occur even if the emission reductions expected to result from the part D NSR program do not occur. The emission projections made by Ohio to demonstrate maintenance of the NAAQS considered growth in point source emissions (along with growth for other source categories) premised on the assumption that the Prevention of Significant Deterioration (PSD) program, rather than the part D NSR, would be in effect during the maintenance period. (It should be noted that the growth factors assumed may even be overestimates under PSD, which would restrain source growth through the application of best available control technology.) Under NSR, significant point source emissions growth would not occur. Thus, contrary to the assertion of the commenter, Ohio has demonstrated that there is no need to retain the part D NSR as an operative program in the SIP during the maintenance period in order to provide for continued maintenance of the NAAQS. (If this demonstration had not been made, NSR would have had to have been retained in the SIP as an operative program since it would have been needed to maintain the ozone standard.)

The other purpose that requiring the full approval of a part D NSR program might serve is to ensure that NSR would become a contingency provision in the maintenance plan required for these areas by section 107(d)(3)(E)(iv) and 175A(d). These provisions require that for an area to be redesignated to attainment, it must receive full approval of a maintenance plan containing ''such contingency provisions as the Administrator deems necessary to assure that the State will promptly correct any violation of the standard which occurs after the redesignation of the area as an attainment area. Such provisions shall include a requirement that the State will implement all measures with respect to the control of the air pollutant concerned which were contained in the SIP for the area before redesignation of the area as an attainment area.'' Based on this language, it is apparent that whether an approved NSR program must be included as a contingency provision depends on whether it is a ''measure'' for the control of the pertinent air pollutants.

The term ''measure'' is not defined in section 175A(d) and Congress utilized

that term differently in different provisions of the Clean Air Act with respect to the PSD and NSR permitting programs. For example, in section 110(a)(2)(A), Congress requires that SIPs include ''enforceable emission limitations and other control measures, means, or techniques * * * as may be necessary or appropriate to meet the applicable requirements of the Act.'' In section 110(a)(2)(C), Congress requires that SIPs include ''a program to provide for the enforcement of the measures described in subparagraph (A), and regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that NAAQS are achieved, including a permit program as required in parts C and D.'' If the term ''measures'' as used in section 110 (a)(2)(A) and (c) had been intended to include PSD and NSR there would have been no point to requiring that SIPs include both measures and preconstruction review under parts C and D (PSD or NSR). Unless ''measures'' referred to something other than preconstruction review under parts C and D, the reference to preconstruction review programs in section 110(a)(2)(C) would be rendered mere surplusage. Thus, in section 110(a)(2) (A) and (C), it is apparent that Congress distinguished ''measures'' from preconstruction review. On the other hand, in other provisions of the Clean Air Act, such as section 161, Congress appeared to include PSD within the scope of the term ''measures.''

EPA believes that the fact that Congress used the undefined term ''measure'' differently in different sections of the Clean Air Act is germane. This indicates that the term is susceptible to more than one interpretation and that EPA has the discretion to interpret it in a reasonable manner in the context of section 175A. Inasmuch as Congress itself has used the term in a manner that excluded PSD and NSR from its scope, EPA believes it is reasonable to interpret ''measure,'' as used in section 175A(d), not to include NSR. That this is a reasonable interpretation is further supported by the fact that PSD, a program that is the corollary of part D NSR for attainment areas, goes into effect in lieu of part D NSR when an area is redesignated to attainment. This distinguishes NSR from other required programs under the Clean Air Act, such as inspection and maintenance programs, which have no corollary for attainment areas. Moreover, EPA believes that those other required programs are clearly within the scope of the term ''measure.''

EPA is not suggesting that NSR and PSD are equivalent, but merely that they are the same type of program. The PSD program is a requirement in attainment areas and is designed to allow new source permitting, yet contains adequate provisions to protect the NAAQS. If any information, including preconstruction monitoring, indicates that an area is not continuing to meet the NAAQS after redesignation to attainment, the requirements of 40 CFR part 51, appendix S (Interpretive Offset Rule) or a 40 CFR 51.165(b) program would apply.

EPA believes that in any area that is designated or redesignated as attainment under section 107, but experiences violations of the NAAQS, these provisions should be interpreted as requiring major new or modified sources to obtain VOC emission offsets of at least a 1:1 ratio, as presumptive that 1:1 NO_X offsets are necessary. See October 14, 1994 memorandum from Mary Nichols entitled, ''Part D New Source Review (part D NSR) Requirements for Areas Requesting Redesignation to Attainment.'' In addition, permits to install cannot be issued under the PSD program unless the applicant can demonstrate that the increased emissions from the new or modified source will not result in a violation of the NAAQS.

EPA's logic in treating part D NSR in this manner does not mean that other applicable part D requirements, including those that have been previously met and previously relied upon in demonstrating attainment, could be eliminated without an analysis demonstrating that maintenance would be protected. As noted above, Ohio has demonstrated that maintenance would be protected with PSD in effect, rather than part D NSR. Thus, EPA is not permitting part D NSR to be removed without a demonstration that maintenance of the standard will be achieved.

The position taken in this action is consistent with EPA's current national redesignation policy. This policy permits redesignation to proceed without otherwise required NSR programs having been fully approved and converted to contingency provisions, provided that the area demonstrates, as has been done in this case, that maintenance will be achieved with the application of PSD rather than part D NSR.

Comment 15: A commenter states that EPA cannot lawfully or rationally grant a NO_X waiver to the Kentucky portion of the nonattainment area because EPA has not determined that NO_X reductions are unnecessary throughout the entire nonattainment area; and EPA has in fact proposed to approve NO_X RACT as a contingency measure in the Ohio portion of the nonattainment area; and EPA has determined that additional NO_X reductions are needed in Ohio to prevent ozone violations in downwind states. The commenter asserts that EPA's approval of a NO_X waiver under these circumstances, and its failure to require NO_X RACT regionwide, is irrational and violates the CAA.

Response 15: We disagree with the commenter. EPA has determined that additional NO_X reductions are unnecessary throughout the entire nonattainment area as both the Kentucky and Ohio portions have three years of quality-assured ozone monitoring data indicating attainment. Based on this data, the area has demonstrated in accordance with section 182(f)(1)(A) that additional reductions of NO_X will not contribute to attainment of the 1-hour ozone standard. Consequently, EPA is approving NO_X RACT waivers for both the Ohio and Kentucky portions of the Cincinnati-Hamilton nonattainment area.

The area's contingency plan focuses initially on implementation of VOC precursor controls in the event of control inadequacies. Moreover, the redesignation proposal specifically states that, although NO_X RACT is listed in the Ohio portion of the contingency plan, such measures will be implemented only ''if a violation of the ozone NAAQS is recorded in the Cincinnati[-Hamilton] Moderate Nonattainment Area after implementation of the selected VOC control measures'' in the contingency plan.

The CAA requires EPA to view NO_X waivers in a narrow manner. In general, section 182(f) provides that waivers must be granted if states show that reducing NO_X within a nonattainment area would not contribute to attainment of the ozone NAAQS within the same nonattainment area. Only the role of local NO_X emissions on local attainment of the ozone standard is considered in nonattainment areas outside an ozone transport region. The role of NO_X in regional attainment is addressed separately under section 110(a)(2)(D) of the Clean Air Act, which prohibits one state from significantly polluting another state's downwind areas.

Comment 16: The commenter questions the accuracy, completeness and appropriateness of Ohio's emissions inventory. See 1997 citizen Audit report of the area's compliance with the ozone standard. The commenter finds that the

use of ''previous emissions estimates'' to project emissions ten years into the future for the purpose of showing ''Maintenance Projections'' for the SIP to be highly questionable, claiming that there is no demonstration that the VOC and NO_X are stable or are being reduced.

The commenter states that they have compared emission inventory data in a number of Title V applications and draft OEPA permits (to the extent they have been made available), expecting those applications and permits to provide the most current VOC and NO_X data.

The commenter claims to have found large discrepancies between past emission data and current Title V permit to operate applications. For example, Celotex is identified as a major source for VOCs in Ohio EPA's Statement for Basis for Title V Permit. The commenter says that the Title V permit to operate indicates VOCs totaling over 100 tons per year, with no controls, but that the emission inventories used for past SIPs list at most just over 10 tons per year. The commenter states that there are no VOC controls on this facility. If past inventories are correct, then this facility is or will be emitting significantly more VOCs, which will affect ozone formation. If past inventories didn't include all the VOCs (and reviews of the files indicate this is the case) then the commenter believes the conformity budget is inaccurate.

The Formica facility is another example cited by the commenter, who states that this facility's Title V application estimated maximum emission rate for two coaters is over 3000 tons per year each. The emission inventories have varied from a high of 264 tons for one unit and a low of 11.87 for the other. The commenter contends that the Ohio EPA's local air agency has been having the facility redo stack tests ''to show compliance'' but hasn't done so for the past two years.

The commenter claims to have found similar discrepancies at other facilities, like Morton International and Cincinnati Specialties, and that some facilities do not have all their permits. The commenter complains that facilities are being allowed to repeat stack tests over and over or are not being required to retest at capacity, because they aren't running at capacity. The commenter believes that the Title V program is years behind schedule and many non-Title V permits have expired or are being held as ''non-priorities''.

The commenter overall finds a lack of an effective permitting and enforcement program which would assure the accuracy of the data used in the SIP, and thus assure compliance that the 1-hour standard can be met in future years. For more information on permit and enforcement failures, the commenter refers to the Sierra Club, OPIRG, Ohio Citizen Action and Rivers Unlimited petitions, supplemental petitions, reports and documentation submitted to EPA to revoke Ohio's authority to implement the Clean Air Act and other environmental laws.

The commenter contends that new source review for modifications is not being done, and new source permitting has not been done properly for utilities. The commenter also claims to find that major modifications have been made at Cincinnati Specialties and Celotex without undergoing NSR. The commenter claims that this issue needs to be systematically reviewed at Ohio EPA before considering a SIP or redesignation request adequate.

Response 16: We reviewed the 1990 base year emissions inventory for Ohio that was used to develop the emissions projections and approved it in a rulemaking dated December 7, 1995 (60 FR 62737). This inventory was thoroughly reviewed and deemed adequate after an opportunity for public comment. The point source emissions were based on permit information available at that time. Emissions from individual point sources can vary from year to year due to shutdowns, changes in production and other factors. In addition, the emissions inventory was prepared to estimate what a typical summer day's emissions were during 1990 instead of showing what the maximum emissions were that a source could potentially emit during that summer. This is more representative of what is actually occurring than using the maximum potential emissions. Emissions inventory projections were made following EPA guidance for projecting emissions inventories. This guidance allows areas to project their actual emissions based on projected changes in industrial employment. This is a reasonable factor to use to project future emissions for a large number of sources.

In any event, the ozone SIP for the Cincinnati-Hamilton area has been fully approved. The Title V permitting program is not an applicable SIP requirement and there is no requirement for EPA to evaluate and reassess individual permits for enforceable emission limits prior to redesignation of the area. The redesignation criteria do not include reviewing permitting programs and enforcement programs to ascertain whether or not any implementation deficiencies exist. Any failures that may be occurring are not undermining attainment, and any deficiencies that are confirmed can be addressed and corrected in other contexts. The maintenance plan is also designed to assure that attainment of the standard will be preserved.

As noted in EPA's Response to Comment 5, EPA in response to the petitions cited by the commenter, is currently conducting a comprehensive review of the implementation issues raised by the petitions. Any implementation deficiencies that EPA finds as a result of this review will be addressed and corrected in other contexts unrelated to the redesignation procedure that is the subject of this rulemaking. The issues relating to alleged standard-setting, permit and enforcement failures raised by commenters are not required to be resolved in the context of a redesignation action. Also see Response 14.

Comment 17: The commenter notes that Stage II Vapor Recovery is assumed to be in place to demonstrate conformity for the metropolitan planning organization's Transportation Improvement Program (TIP) for the approval and funding of highway projects. The commenter states that Ohio EPA's local air agency has stated in the past that they check Stage II Vapor Recovery systems when installed, but when citizens complained about leaking and broken hoses, the air agency would not investigate, saying that they had checked compliance when the systems were installed. The commenter alleges that the failure to effectively enforce Stage II and subsequently suspend Stage II, invalidates the TIP conformity analysis and makes it more likely that the region will exceed the ozone standard.

The commenter declares that transportation conformity analysis does not include induced travel and exempted projects which were in the ''pipeline'' prior to the 1991 Intermodal Surface Transportation Efficiency Act (ISTEA) legislation. Now that such projects as the Butler Regional Highway are coming online, the transportation sector will be increasing its emissions.

Response 17: See Response 12. Transportation Plans must conform with the SIP requirements before they can be found adequate. Conformity of transportation plans is not a requirement for redesignation of an area from nonattainment to attainment, and thus these comments are not germane to this rule. Conformity requirements will continue to apply to the Cincinnati-Hamilton area once it is redesignated to attainment subject to the requirement to have a maintenance plan.

Comment 18: The commenter argues that redesignation would mislead the public into thinking that Cincinnati's air does not pose a serious health risk. The commenter states that in May 1997, EPA issued ''A Special Alert for People with Asthma and Other Respiratory Problems in the Greater Cincinnati/Northern Kentucky Metropolitan Area.'' EPA warns that negative health effects are ''of concern to everyone who works, plays or spends time outdoors, even the healthiest people.'' The commenter claims that there is no reason to believe that the air quality is any safer now than it was two years ago.

The commenter claims that in 1999 there were three violations of the 1-hour standard and 77 violations of the new 8-hour standard, according to Hamilton County Department of Environmental Services (as of September 12, 1999). The commenter contends that smog alerts were also issued for 27 days, including one eight-consecutive-day period from June 6 to 13; and two five-consecutive-day periods from July 16 to 20 and July 22 to 26. All together, the commenter contends, this represents nearly one third of the summer when it was unsafe for people to breathe the air.

The CAA requires the SIPs to make RFP. The term '' 'reasonable further progress' '' means such annual incremental reductions in emissions of the relevant air pollutant as are required by this part or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable national ambient air quality standard by the applicable date.' The commenter states that 13 exceedances of the standard show that the RFP plan was not adequate and still isn't adequate.

The commenter says that Ohio should be undertaking the measures outlined in the contingency plan since the area has not yet achieved the standard.

According to the commenter, continued efforts are needed to meet the 1-hour standard and that standard must be met before redesignation. In July 1997, EPA revised the NAAQS for ozone. The commenter states that EPA is currently phasing out and replacing the 1-hour ozone standard with the new eight-hour standard to protect against longer exposure periods. The 1-hour standard will be revoked when an area has achieved three consecutive years of air quality data meeting the 1-hour standard. Further, the commenter argues, EPA states that an area meets the ozone NAAQS if there is not more than one day per year when the highest hourly value exceeds the threshold. The commenter claims that EPA's policy refers to the ''standard'' not the technical issues of a violation being three exceedances of the standard.

Response 18: We disagree with the commenter. As shown above in Table 3 (Response 11), air quality monitors show that the area is attaining the 1-hour ozone standard. Ozone alerts were called in the area to alert the public to take steps to reduce air pollution when the area was either monitoring high levels of ozone or had the potential to start monitoring high levels of ozone. Calling an ozone alert does not necessarily mean that the standard was exceeded on a particular day. The summary of monitoring data in Response 11 shows that the number of monitored exceedances was much lower than the number of alerts called. The air quality is measured by ozone monitors and the data collected is compared to the level of the ozone standard. See 40 CFR 50.9 and Appendix H. The number of ozone alerts called is not a part of this determination. Also, see Responses 2, 11, 19 and 20.

The RFP plan was approved as adequate. See 63 FR 4188 (January 28, 1998) and 63 FR 67586 (December 8, 1998). Emissions reductions provided by this plan have helped the area to attain the 1-hour ozone standard.

Comment 19: The commenter believes that EPA should not take any action on the redesignation until the federal courts resolve the current legal questions surrounding the new standard. In any event, the commenter states, EPA and the health community recognize that the old standard is unsafe. While the commenter agrees that EPA's interpretation of the letter of the law may qualify the area to be in attainment based on the old standard, it believes that this ruling would distort the spirit and purpose of the law.

Response 19: EPA's action to redesignate the Cincinnati-Hamilton area to attainment under the 1-hour standard is not affected by the 8-hour standard or any legal questions surrounding the status of the 8-hour standard. EPA currently has a legal obligation under the Clean Air Act to act on redesignation requests. See section 107(d)(3)(D) (''Within 18 months of receipt of a complete State redesignation submittal, the Administrator shall approve or deny such redesignation.''). See also Response 2 above.

Comment 20: The commenter maintains that the Cincinnati-Hamilton area continues to exceed the 1-hour ozone standard. In 1999, the commenter states, the standard has been exceeded three times, in 1998 four times, in 1997 three times and in 1996 three times. The commenter alleges that the standard has been exceeded 10 times in the three years being evaluated under this request, and that it has been exceeded three times since the three years being used for the purpose of showing attainment.

The commenter contends that the region was supposed to attain the standard in 1996, yet three years later the standard is still being exceeded. The commenter believes that reclassifying the area as a serious nonattainment area would result in significant and valid steps to actually reduce ozone precursors. The commenter alleges that continued failure to meet the standard three years after the required date shows that further steps must be taken.

Response 20: We evaluate attainment of the 1-hour ozone standard by comparing the data at each individual monitor to the 1-hour ozone standard. This data is summarized in Response 11. Table 3 shows that the total number of exceedances measured at each individual monitor averages less than 1.0 over the 1996–1998 and 1997–1999 time periods. EPA's interpretation of the 1-hour ozone standard, long embodied in its regulations, allows a monitor in the area to exceed the standard as long as it does not average more than 1.0 per year over a three year period. See 40 CFR 50.9 and Appendix H for EPA's interpretation of the 1-hour ozone standard. This shows that the area has attained the standard.

The commenter has erroneously combined the data from several monitors in order to imply that the area is not attaining the 1-hour ozone standard. This is inconsistent with EPA's long-standing regulations concerning the definition of compliance and how we interpret the 1-hour ozone standard. See also Response to Comment 21.

Comment 21: The commenter states that a strict reading of the CAA (section 181(a)(5)(B)) requires that not more than 1 exceedance of the national ambient air quality standard level for ozone may have occurred in the area in the year preceding the extension year (for extensions of the deadline). The Cincinnati-Hamilton area, the commenter states, has far more than one exceedance per year.

The commenter contends that it is now three years after the deadline for achieving the standard, and that the region is now well overdue for ''Reclassification Upon Failure to Attain.'' The CAA requires that ''Within 6 months following the applicable attainment date (including any extension thereof) for an ozone nonattainment area, the Administrator shall determine, based on the area's

design value (as of the attainment date), whether the area attained the standard by that date. Except for any Severe or Extreme Area, any area that the Administrator finds has not attained the standard by that date shall be reclassified by operation of law in accordance with table 1 of subsection (a) to the higher of—(i) the next higher classification for the area, or (ii) the classification applicable to the area's design value as determined at the time of the notice required under subparagraph (b).''

Response 21: We disagree with the commenter. Section 181(a)(5)(B) of the CAA governs what an area has to meet in order to receive an attainment date extension. This area has met this part of the CAA and has been given an extension of the attainment date twice. See final rule (62 FR 61241, November 17, 1997), effective December 17, 1997; and direct final rule (63 FR 14623, March 26, 1998), effective May 26, 1998. These two consecutive extensions extended the attainment date to November 15, 1998. The area attained the standard by this new deadline. Also see air quality summary in Response 11. The area was not reclassified to a higher classification since it qualified for an extension of the attainment date, having attained the 1-hour ozone standard by the deadline set by the applicable extension. In this rulemaking EPA is making this determination of attainment by the applicable attainment date, and the area is not subject to reclassification.

Comment 22: The commenter alleges that the large number of exceedances of the eight-hour standard are another indication that the regional ozone levels must be reduced. The plan for reduction should be put in place now, not just to meet regulatory deadlines but to protect public health.

Response 22: The 8-hour ozone standard is not the subject of this rulemaking. The Cincinnati-Hamilton area is being evaluated only with reference to the 1-hour ozone standard. See Response 2 and Response 19.

Comment 23: The commenter contends that the SIP relied on voluntary actions such as those proposed by the Regional Ozone Coalition and funded by Congestion Mitigation and Air Quality Improvement program (CMAQ) (under ISTEA) funds, and that the voluntary actions fail to meet the CAA requirements of being permanent and enforceable. Furthermore, the commenter expresses the fear that the region will no longer qualify for CMAQ funds if it is redesignated, and that the region will no longer have access to funds which have been used since 1996 to reduce the vehicle component of ozone precursors, including reduced bus fares. The reduced bus fares have been effective in increasing ridership and would likely need to continue unless such funding comes from another source. The commenter says it has no indication that these funds have been replaced or will come from other sources.

Response 23: We disagree with the commenter. The voluntary actions were not used to meet the requirement that the improvement in air quality was due to permanent and enforceable measures. Permanent and enforceable measures listed in the proposed rulemaking, such as the Federal Motor Vehicle Emissions Control Program, have provided the emissions reductions that have brought the area into attainment. The CAA does not prohibit areas from using voluntary measures to further reduce air pollution.

The State of Ohio receives CMAQ funding from the United States Department of Transportation for all of the ozone and carbon monoxide nonattainment and maintenance areas in Ohio. The CMAQ funds are allocated to the states based on the allocation formula in the Transportation Equity Act for the 21st century passed by Congress during 1998. The Cincinnati-Hamilton area currently receives CMAQ funding based on its status as a moderate ozone nonattainment area.

In general, the CMAQ funding allocation for a state is dependent on the number and size of the ozone and carbon monoxide nonattainment and maintenance areas in the State. The allocation does change slightly when an area goes from an ozone nonattainment area to an ozone maintenance area. Ozone maintenance areas are eligible for CMAQ funding. The allocation of funding to the State for a maintenance area is factored at a slightly lower level than for a nonattainment area; however, the funding is still significant. Changing the status of the area to an attainment area with a maintenance plan does not eliminate CMAQ funding. EPA believes that the CMAQ funds available to Ohio for the Cincinnati-Hamilton area will be sufficient to continue to support many of the existing air quality projects that are currently being funded.

Comment 24: The commenter opposes the redesignation because, as the commenter states, most of the permits the commenter has reviewed do not have enforceable limits. The commenter believes most ''compliance'' is determined by calculations based on unverified data, and that facilities are not required to perform stack tests to show compliance with VOC limits. (It refers to files on Cincinnati Specialties for example.) The commenter points out that the CAA states ''Such plan provisions shall include enforceable emission limitations.''

Response 24: EPA approved enforceable limits into the SIP for Cincinnati Specialties located at 501 Murray Road, Cincinnati, Ohio. See 61 FR 18256, dated April 25, 1996. The rule containing these emissions limits is found at SIP section 3745–21–09(YY). These limits apply to Cincinnati Specialties.

The ozone SIP for the Cincinnati-Hamilton area has been fully approved, and there are no criteria requiring EPA to evaluate and assess Title V permit programs or review individual permits for enforceable emission limits prior to redesignation of the area. The SIP approval and redesignation criteria do not include evaluating permitting programs to ascertain whether or not any deficiencies exist. Whatever failures may be occurring are not undermining attainment, and any deficiencies that are confirmed can be addressed and corrected in other contexts, including a finding of failure to implement under section 173(b) of the CAA or requiring a SIP revision under section 110(a)(2)(H) of the CAA. The maintenance plan is also designed to assure that attainment will be preserved.

Also see Responses 5, 14, and 16.

Comment 25: What is the NAAQS? What is the ''one-hour ozone standard''?

Response 25: Air quality standards—known as National Ambient Air Quality Standards (NAAQS)—set national standards for acceptable concentrations of specific pollutants in outdoor air that threaten public health and the environment across broad regions of the country and are emitted in relatively large quantities by a variety of sources. EPA has established air quality standards for six pollutants or classes of pollutants, including ground level ozone. The 1-hour ozone standard is set at an ambient concentration of 0.12 parts per million and is averaged over a 1-hour time period.

Ozone monitors in the Cincinnati-Hamilton area are in operation from late spring to early fall, the period of highest ozone concentrations. These monitors continuously sample and analyze the air for ozone. This data is averaged for each hour during the day and compared to the NAAQS. For further information see 65 FR 3633–3634.

Comment 26: Is this redesignation to a better or worse level?

Response 26: Redesignating an area from nonattainment to attainment changes its official listing to indicate that the area has better air quality which is meeting the relevant NAAQS.

Comment 27: Why is EPA ''determining that certain attainment demonstration requirements, along with certain other related requirements of part D of Title 1 of the Clean Air Act not applicable to the Cincinnati-Hamilton area''? Also, 65 FR 3632 of the proposed rule states that, ''EPA has interpreted the general provisions of subpart 1 of part D of Title 1 (sections 171 and 172) so as not to require the submission of SIP revisions concerning RFP, attainment demonstrations, or contingency measures.''

Response 27: These measures were intended to bring an area into attainment of the NAAQS. EPA has interpreted certain of these requirements as no longer being applicable in the Cincinnati-Hamilton area since it is in fact monitoring attainment of the 1-hour ozone NAAQS. See proposed rulemaking at 65 FR 3630. Also, see May 10, 1995 memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, entitled ''Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard,'' and Response 7, above, in this rulemaking.

Comment 28: Page 3636 of the proposed rulemaking states that ''EPA believes, however, that in the context of the particular circumstances of this redesignation, it is permissible to depart from that policy and instead accept a commitment to implement these RACT rules as contingency measures in the maintenance plan rather than require full adoption and approval of the rules prior to approval of the redesignation.'' Why do this and what exactly are these particular circumstances?

Response 28: The proposed rule at 65 FR 3636–3637 contains a discussion of the reasoning and circumstances. Also, see Response 7, above, in this rulemaking.

Comment 29: The 15 percent plan was mentioned on page 3636 of the proposed rulemaking. Why would reductions of only 15 percent be required in the area?

Response 29: Section 182(b)(1) of the Clean Air Act specifically requires a 15% reduction for areas classified as moderate and above. These reductions helped to bring the area into attainment. Additional reductions are not now needed to reach attainment of the 1-hour ozone standard since the area is attaining the 1-hour ozone standard. Also, see Response to Comment 27 in this rulemaking.

Comment 30: How exactly does the Administrator determine that NO_X reductions would not contribute to attainment?

Response 30: For the Cincinnati-Hamilton area this determination is based on air quality monitoring data showing that the area is already attaining the 1-hour ozone standard, and therefore it does not need any additional NO_X reductions to attain the 1-hour ozone standard. Also, see discussion and responses elsewhere in this rulemaking.

III. What Actions Are We Taking?

We are determining that the Cincinnati-Hamilton moderate ozone nonattainment area has attained the NAAQS for ozone by its (extended) attainment date. The Cincinnati-Hamilton area includes the Ohio Counties of Hamilton, Butler, Clermont, and Warren and the Kentucky Counties of Boone, Campbell, and Kenton. On the basis of this determination, EPA is also determining that certain attainment demonstration requirements (section 172(c)(1)), along with certain other related requirements, of part D of Title 1 of the CAA, specifically the section 172(c)(9) contingency measure requirement, the section 182(b)(1) attainment demonstration requirement and the 182(j) multi-state attainment demonstration requirement are not applicable to the Cincinnati-Hamilton area.

We are approving an exemption from the NO_X requirement as provided for in section 182(f) for the Cincinnati-Hamilton area.

We are approving the redesignation of the Cincinnati-Hamilton area to attainment of the 1-hour ozone standard and we are approving the section 175A maintenance plans as revisions to the Ohio and Kentucky SIPs. The States of Ohio and Kentucky have satisfied all of the necessary requirements of the Act.

IV. Why Are We Taking These Actions?

We are making a determination that the area has attained the 1-hour ozone standard by its (extended) attainment date and has continued to be in attainment since that time. EPA is basing this determination upon three years of complete, quality-assured, ambient air monitoring data for the 1996–1998 ozone seasons that demonstrate that the ozone NAAQS has been attained in the entire Cincinnati-Hamilton area. EPA also is determining that based on the most recent 3 years of data from 1997–1999, the area has continued to attain the standard. EPA believes it is reasonable to interpret provisions regarding attainment demonstrations, along with certain other related provisions, so as not to require SIP submissions, if an ozone nonattainment area subject to those requirements is monitoring attainment of the ozone standard (*i.e.,* attainment of the NAAQS is demonstrated with three consecutive years of complete, quality assured, air quality monitoring data). See May 10, 1995, memorandum from John Seitz (referenced in Response 27) and *Sierra Club* v. *EPA*, 99 F.3d 1551 (10th Cir. 1996).

Section 182(f) establishes NO_X requirements for ozone nonattainment areas which require adoption and implementation of control measures for major stationary sources of NO_X similar to those which apply to major stationary sources of VOCs. One of the control requirements applicable to major stationary sources of VOCs is RACT. Therefore, pursuant to section 182(f) of the CAA, RACT is a requirement that is also applicable to major stationary sources of NO_X in an ozone nonattainment area. However, subsection 182(f)(1)(A) further provides that these requirements shall not apply to a nonattainment area outside an ozone transport region if the Administrator determines that additional NO_X reductions would not contribute to attainment of the ozone NAAQS in that area. Under EPA guidance, a request for an exemption from the NO_X requirements may be based upon the most recent three years of monitoring data.

An EPA memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, dated February 8, 1995, entitled ''Section 182(f) Nitrogen Oxides (NO_X) Exemptions-Revised Process Criteria,'' decouples the section 182(f) exemptions from NO_X transport issues. The memorandum states that for an area that did not implement section 182(f) NO_X requirements, but did attain the ozone standard as demonstrated by ambient air monitoring data (consistent with 40 CFR part 58 and recorded in EPA's AIRS), it is apparent that the additional NO_X reductions required by section 182(f) would not contribute to attainment of the ozone NAAQS in that area.

Because the Cincinnati-Hamilton area is currently demonstrating compliance with the ozone NAAQS based on three years of complete, quality-assured, ambient monitoring data, EPA is exempting the area from the section 182(f) NO_X requirements. As discussed in detail above, EPA is also determining that the Cincinnati-Hamilton area has attained the 1-hour ozone NAAQS. Ambient air monitoring data for the 1996 to 1998 ozone seasons demonstrate that the ozone NAAQS has been attained in the area. In addition, 1999

ambient air monitoring data show that the area continues to attain the standard. Because the Cincinnati-Hamilton area has attained the ozone NAAQS, without benefit of additional NO_X reductions, EPA has determined that this exemption request satisfies the NO_X waiver test set forth in subsection 182(f)(1)(A).

We are approving the maintenance plan as a revision to the SIP because it meets the requirements of section 175A and 107(d). We are also redesignating the area because three years of ambient air monitoring data demonstrate that the ozone NAAQS has been attained, the area has continued in attainment, and the area has satisfied the other requirements for redesignation.

V. What Are the Effects of These Actions?

These actions determine that the area attained the 1-hour ozone standard by its (extended) attainment date (November 15, 1998) and that the requirements of section 172(c)(1), 182(b)(1) and 182(j) concerning the submission of the ozone attainment demonstration and the requirements of section 172(c)(9) concerning contingency measures for reasonable further progress (RFP) or attainment are not applicable to the area. This final action also exempts the area from section 182(f) NO_X requirements for moderate ozone nonattainment areas. However, all NO_X controls previously approved for the area by EPA must continue to be implemented. No additional NO_X measures are required for purposes of attaining the 1-hour standard.

The redesignation changes the official designation of the Ohio Counties of Butler, Warren, Clermont, and Hamilton and the Kentucky Counties of Boone, Campbell, and Kenton from nonattainment to attainment for the 1-hour ozone standard. It also approves as a SIP revision and puts into place plans for maintaining the 1-hour ozone standard for the next 10 years. These plans include contingency measures to correct any future violations of the 1-hour ozone standard.

The 1-hour ozone standard mobile source budgets for the Ohio portion of the area for the purposes of transportation conformity are now 37.9 tons per summer day VOC and 52.3 tons per summer day NO_X for the year 2010. The mobile source budgets for the purposes of transportation conformity for the Kentucky portion of the area are now 5.83 tons per summer day VOC and 15.13 tons per summer day NO_X for the year 2010.

VI. Approving SIP Revisions in Audit Law States

Nothing in this action should be construed as making any determination or expressing any position regarding Kentucky's audit privilege and penalty immunity law Kentucky—''KRS 224.01–040'' or its impact upon any approved provision in the SIP, including the revision at issue here. The action taken herein does not express or imply any viewpoint on the question of whether there are legal deficiencies in this or any other Clean Air Act program resulting from the effect of Kentucky's audit privilege and immunity law. A state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities. EPA may at any time invoke its authority under the Clean Air Act, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the Clean Air Act is likewise unaffected by a state audit privilege or immunity law.

VII. Administrative Requirements

A. Executive Order 12866

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

B. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866; and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

C. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, 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 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.

D. Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that 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.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with state and local officials early in the process of developing the proposed regulation.

EPA also may not issue a regulation that has federalism implications and that preempts state law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule 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, as specified in Executive Order 13132, because it merely affects the status of a geographical area, does not impose any new requirements on sources, or allows a state to avoid adopting or implementing other requirements, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

E. Executive Order 12898

Executive Order 12898 (59 FR 7629, February 16, 1994) instructs EPA to address, as appropriate, disproportionately high and adverse health or environmental effects on minority and low-income populations. As set forth in its response to Comment 3, above, EPA has found that this rulemaking is consistent with Executive Order 12898 and does not impose any disproportionately high and adverse human health or environmental effects on minority and low-income populations.

F. Regulatory Flexibility

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

This rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the state is already imposing. In addition, approval of NO_X exemption requests and determination of attainment do not create any new requirements, but instead allow the states to avoid the imposition of the indicated requirements. Redesignation of an area to attainment under section 107(d)(3)(E) of the Clean Air Act does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any new regulatory requirements on sources. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

G. Unfunded Mandates

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

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

H. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective July 5, 2000.

I. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, and in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Redesignation is an action that affects the status of a geographical area but does not impose any new requirements on sources. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

J. Other

EPA finds that there is good cause for this determination of attainment, NO_X exemption, and redesignation to attainment and SIP revision to become effective 15 days after publication because a 30-day delayed effective date is unnecessary due to the nature of these actions, which relieve the area from certain Clean Air Act requirements that would otherwise apply to it. The 15-day effective date for this redesignation and other related actions is authorized under both 5 U.S.C. 553(d)(l), which provides that rulemaking actions may become effective less than 30 days after publication if the rule ''grants or recognizes an exemption or relieves a restriction'' and section 553(d)(3), which allows an effective date less than

30 days after publication ''as otherwise provided by the agency for good cause found and published with the rule.''

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

Ozone SIPs are designed to satisfy the requirements of part D of the Act and provide for attainment and maintenance of the ozone NAAQS. This final redesignation should not be interpreted as authorizing the State to delete, alter, or rescind any of the VOC or NO_X emission limitations and restrictions contained in the approved ozone SIP. Changes to ozone SIP VOC regulations rendering them less stringent than those contained in the EPA approved plan cannot be made unless a revised plan for attainment and maintenance is submitted to and approved by EPA. Unauthorized relaxations, deletions, and changes could result in both a finding of nonimplementation (section 173(b) of the Act) and in a SIP deficiency call made pursuant to section 110(a)(2)(H) of the Act.

K. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 18, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 81

Environmental protection, Air pollution control.

Authority: 42 U.S.C. 7401–7671q.

Dated: May 26, 2000.

Francis X. Lyons,

Regional Administrator, Region 5.

Dated: June 5, 2000.

John H. Hankinson, Jr.,

Regional Administrator, Region 4.

Chapter 1, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart S—Kentucky

2. Section 52.920 is amended by adding a new entry to the table in paragrpah (e) in numerical order to read as follows:

§ 52.920 Identification of plan.

* * * * *

(e) *EPA-approved nonregulatory provisions.*

EPA-APPROVED KENTUCKY NONREGULATORY PROVISIONS

Appendix	Title/subject	State effective date	EPA approval date	Federal Register notice
*	*	*	*	*
20	Northern Kentucky Ozone Maintenance Plan.	.....	July 5, 2000.	..... [Insert FR page citation]

3. Section 52.930 is amended by adding paragraphs (g), (h), and (i) to read as follows:

§ 52.930 Control strategy ozone.

* * * * *

(g) The redesignation request submitted by the Commonwealth of Kentucky, on October 29, 1999, for the Kentucky portion of the Cincinnati-Hamilton moderate interstate ozone nonattainment area from nonattainment to attainment was approved on July 5, 2000. The mobile source budgets for the Kentucky portion of the area for the purposes of transportation conformity are now 5.83 tons per summer day of volatile organic compounds and 15.13 tons per summer day of nitrogen oxides for the year 2010.

(h) Determination—EPA is determining that as of July 5, 2000, the Kentucky portion of the Cincinnati-Hamilton ozone nonattainment area (which includes the Counties of Boone, Kenton, and Campbell) has attained the 1-hour ozone standard and that the attainment demonstration requirements of section 182(b)(1), 182(j), and 172(c)(1), along with the section 172(c)(9) contingency measure requirements, do not apply to the area.

(i) Approval—EPA is approving an exemption from the requirements contained in section 182(f) of the Clean Air Act. This approval exempts Boone, Kenton, and Campbell counties in Kentucky from the NO_X related general conformity provisions; nonattainment NSR for new sources and modifications that are major for NO_X; NO_X RACT; and the requirement for a demonstration of compliance with the enhanced I/M performance standard for NO_X.

4. Section 52.937 is amended by adding paragraph (b) to read as follows:

§ 52.937 Review of new sources and modifications.

* * * * *

(b) Approval—EPA is approving the section 182(f) oxides of nitrogen (NO_X) reasonably available control technology (RACT) exemption for the Kentucky portion of the Cincinnati-Hamilton ozone (O_3) moderate nonattainment area. This approval exempts this area from implementing NO_X RACT on major sources of NO_X.

Subpart KK—Ohio

5. Section 52.1885 is amended by revising paragraph (x) and adding paragraph (a)(14), (b)(11), (dd) and (ee) to read as follows:

§ 52.1885 Control strategy: Ozone.

(a) * * *

(14) Approval—EPA is approving the ozone maintenance plan for the Ohio portion of the Cincinnati-Hamilton area

that was received by EPA on July 2, 1999, and completed on December 22, 1999. The mobile source budgets for the Ohio portion of the area for the purposes of transportation conformity are now 37.9 tons per summer day of volatile organic compounds and 52.3 tons per summer day of nitrogen oxides for the year 2010.

(b) * * *

(11) Butler, Clermont, Hamilton, and Warren Counties.

* * * * *

(x) Approval—EPA is approving requests submitted by the State of Ohio on March 18, November 1, and November 15, 1994, for exemption from the requirements contained in section 182(f) of the Clean Air Act. This approval exempts the following counties in Ohio from the NO_X related general and transportation conformity provisions; nonattainment area NSR for new sources and modifications that are major for NO_X: Clinton, Columbiana, Delaware, Franklin, Jefferson, Licking, Mahoning, Preble, Stark, and Trumbull. This approval also exempts the following counties in Ohio from the NO_X related general and transportation conformity provisions; nonattainment area NSR for new sources and modifications that are major for NO_X; NO_X RACT; and a demonstration of compliance with the enhanced I/M performance standard for NO_X: Ashtabula, Cuyahoga, Geauga, Lake, Lorain, Medina, Portage, and Summit.

* * * * *

(dd) Determination—EPA is determining that, as of July 5, 2000, the Ohio portion of Cincinnati-Hamilton ozone nonattainment area (which includes the Counties of Butler, Clermont, Hamilton and Warren) has attained the 1-hour ozone standard and that the attainment demonstration requirements of section 182(b)(1), 182(j), and 172(c)(1), along with the section 172(c)(9) contingency measure requirements, do not apply to the area.

(ee) Approval—EPA is approving an exemption from the requirements contained in section 182(f) of the Clean Air Act. This approval exempts Butler, Clermont, Hamilton, and Warren counties in Ohio from the NO_X related general conformity provisions; the nitrogen oxides nonattainment NSR for new sources and modifications that are major for NO_X; NO_X RACT; and a demonstration of compliance with the enhanced automobile inspection and maintenance performance standard for NO_X.

* * * * *

6. Section 52.1879 is amended by revising paragraph (e) and adding paragraph (g) to read as follows:

§ 52.1879 Review of new sources and modifications.

* * * * *

(e) Approval—EPA is approving requests submitted by the State of Ohio on March 18, November 1, and November 15, 1994, for exemption from the requirements contained in section 182(f) of the Clean Air Act. This approval exempts the following counties in Ohio from the NO_X related general and transportation conformity provisions and nonattainment area NSR for new sources and modifications that are major for NO_X: Clinton, Columbiana, Delaware, Franklin, Jefferson, Licking, Mahoning, Preble, Stark, and Trumbull. This approval also exempts the following counties in Ohio from the NO_X related general conformity provisions; nonattainment area NSR for new sources and modifications that are major for NO_X; NO_X RACT; and a demonstration of compliance with the enhanced I/M performance standard for NO_X: Ashtabula, Cuyahoga, Geauga, Lake, Lorain, Medina, Portage, and Summit.

* * * * *

(g) Approval—EPA is approving an exemption from the requirements contained in section 182(f) of the Clean Air Act. This approval exempts Butler, Clermont, Hamilton, and Warren counties in Ohio from nonattainment NSR for new sources and modifications that are major for NO_X.

* * * * *

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

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

2. Section 81.336 is amended by revising the ozone table entry for the Cincinnati-Hamilton Area to read as follows:

§ 81.336 Ohio.

* * * * *

OHIO—OZONE

[1-hour standard]

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
* * *	*	*	*	*
Cincinnati-Hamilton Area:				
Butler County	6/19/00	Attainment.		
Clermont County	6/19/00	Attainment.		
Hamilton County	6/19/00	Attainment.		
Warren County	6/19/00	Attainment.		
* * *	*	*	*	*

[1] This date is November 15, 1990 unless otherwise noted.

* * * * *

3. Section 81.318 is amended by revising the ozone table entry for the Cincinnati-Hamilton Area to read as follows:

§ 81.318 Kentucky

* * * * *

OHIO—OZONE
[1-hour standard]

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Cincinnati-Hamilton Area:				
Boone County	6/19/00	Attainment.		
Campbell County	6/19/00	Attainment.		
Kenton County	6/19/00	Attainment.		
* * *	*	*	*	*

[1] This date is November 15, 1990 unless otherwise noted.

* * * * *

[FR Doc. 00–15294 Filed 6–16–00; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–6718–2]

Protection of Stratospheric Ozone

AGENCY: Environmental Protection Agency.

ACTION: Notice of acceptability.

SUMMARY: This document expands the list of acceptable substitutes for ozone-depleting substances (ODS) under the U.S. Environmental Protection Agency's (EPA) Significant New Alternatives Policy (SNAP) program.

EFFECTIVE DATE: June 19, 2000.

ADDRESSES: Information relevant to this document is contained in Air Docket A–91–42, Central Docket Section, South Conference Room 4, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, telephone: (202) 260–7548. The docket may be inspected between 8:00 a.m. and 5:30 p.m. weekdays. As provided in 40 CFR part 2, a reasonable fee may be charged for photocopying.

FOR FURTHER INFORMATION CONTACT: Anhar Karimjee at (202) 564–2683 or fax (202) 565–2095, U.S. Environmental Protection Agency, Stratospheric Protection Division, Mail Code 6205J, Washington, DC 20460. Overnight or courier deliveries should be sent to the office location at 501 3rd Street, NW, Washington, DC, 20001. The Stratospheric Protection Hotline can be reached at (800) 296–1996. Further information can be found at EPA's Ozone Depletion World Wide Web site at ''http://www.epa.gov/ozone/title6/snap/''.

SUPPLEMENTARY INFORMATION:

I. Section 612 Program
A. Statutory Requirements
B. Regulatory History
II. Listing of Acceptable Substitutes
A. Refrigeration and Air Conditioning
B. Foam Blowing
III. Additional Information
Appendix A—Summary of Acceptable Decisions

I. Section 612 Program

A. Statutory Requirements

Section 612 of the Clean Air Act authorizes EPA to develop a program for evaluating alternatives to ozone-depleting substances. EPA refers to this program as the Significant New Alternatives Policy (SNAP) program. The major provisions of section 612 are:

• *Rulemaking*—Section 612(c) requires EPA to promulgate rules making it unlawful to replace any class I (chlorofluorocarbon, halon, carbon tetrachloride, methyl chloroform, methyl bromide, and hydrobromofluorocarbon) or class II (hydrochlorofluorocarbon) substance with any substitute that the Administrator determines may present adverse effects to human health or the environment where the Administrator has identified an alternative that (1) reduces the overall risk to human health and the environment, and (2) is currently or potentially available.

• *Listing of Unacceptable/Acceptable Substitutes*—Section 612(c) also requires EPA to publish a list of the substitutes unacceptable for specific uses. EPA must publish a corresponding list of acceptable alternatives for specific uses.

• *Petition Process*—Section 612(d) grants the right to any person to petition EPA to add a substance to or delete a substance from the lists published in accordance with section 612(c). The Agency has 90 days to grant or deny a petition. Where the Agency grants the petition, EPA must publish the revised lists within an additional 6 months.

• *90-day Notification*—Section 612(e) requires EPA to require any person who produces a chemical substitute for a class I substance to notify the Agency not less than 90 days before new or existing chemicals are introduced into interstate commerce for significant new uses as substitutes for a class I substance. The producer must also provide the Agency with the producer's unpublished health and safety studies on such substitutes.

• *Outreach*—Section 612(b)(1) states that the Administrator shall seek to maximize the use of federal research facilities and resources to assist users of class I and II substances in identifying and developing alternatives to the use of such substances in key commercial applications.

• *Clearinghouse*—Section 612(b)(4) requires the Agency to set up a public clearinghouse of alternative chemicals, product substitutes, and alternative manufacturing processes that are available for products and manufacturing processes which use class I and II substances.

B. Regulatory History

On March 18, 1994, EPA published rulemaking (59 FR 13044) which described the process for administering the SNAP program and issued EPA's first acceptability lists for substitutes in the major industrial use sectors. These sectors include: refrigeration and air conditioning; foam blowing; solvents cleaning; fire suppression and explosion protection; sterilants; aerosols; adhesives, coatings and inks; and tobacco expansion. These sectors compose the principal industrial sectors that historically consumed the largest volumes of ozone-depleting compounds.

As described in this original rule for the SNAP program, EPA does not believe that rulemaking procedures are required to list alternatives as acceptable with no limitations. Such listings do not impose any sanction, nor do they remove any prior license to use a substance. Consequently, by this notice EPA is adding substances to the list of acceptable alternatives without first requesting comment on new listings.

EPA does, however, believe that notice-and-comment rulemaking is required to place any substance on the list of prohibited substitutes, to list a substance as acceptable only under certain conditions, to list substances as acceptable only for certain uses, or to remove a substance from either the list of prohibited or acceptable substitutes. Updates to these lists are published as separate notices of rulemaking in the **Federal Register**.

The Agency defines a ''substitute'' as any chemical, product substitute, or alternative manufacturing process, whether existing or new, intended for use as a replacement for a class I or class II substance. Anyone who produces a substitute must provide the Agency with health and safety studies on the substitute at least 90 days before introducing it into interstate commerce for significant new use as an alternative. This requirement applies to substitute manufacturers, but may include importers, formulators or end-users, when they are responsible for introducing a substitute into commerce.

A complete chronology of SNAP decisions and the appropriate **Federal Register** citations can be found at EPA's Ozone Depletion World Wide Web site at http://www.epa.gov/ozone/title6/snap/chron.html. This information is also available from the Air Docket (see **ADDRESSES** section above for contact information).

II. Listing of Acceptable Substitutes

This section presents EPA's most recent acceptable listing decisions for substitutes in the refrigeration and foams sectors. For copies of the full list of SNAP decisions in all industrial sectors, contact the EPA Stratospheric Protection Hotline at (800) 296–1996.

The sections below presents a detailed discussion of the substitute listing. The table summarizing today's listing decisions is in Appendix A. The comments contained in the table in Appendix A provide additional information, but are not legally binding under section 612 of the Clean Air Act. Thus, adherence to recommendations in the comments section of the table is not mandatory for use of a substitute. In addition, such comments should not be considered comprehensive with respect to other legal obligations pertaining to the use of the substitute. However, EPA strongly encourages users of acceptable substitutes to apply all such comments to their use of these substitutes. In many instances, the comments simply refer to standardized operating practices that have already been identified in existing industry and/or building-code standards. Thus, many of these comments, if adopted, would not require significant changes in existing operating practices for the affected industry.

A. Refrigeration and Air Conditioning

1. Acceptable Substitutes

(a) HFC–4310mee. *HFC–4310mee is acceptable as a substitute for CFCs and HCFCs in non-mechanical heat transfer applications*. Heat transfer applications are ''all cooling systems that rely on convection to remove heat from an area, rather than relying on mechanical refrigeration'' (59 CFR 13071). HFC–4310mee is nonflammable and has no ozone depletion potential. However, it does have a 100-year global warming potential of 1700. The potential of HFC–4310mee to contribute to global warming may be mitigated in this end-use through the implementation of the venting prohibition under section 608(c)(2) of the Clean Air Act. HFC–4310mee is already acceptable as a substitute in all solvent cleaning end-uses subject to a 200 part per million (ppm) time-weighted average workplace exposure limit and a 400 ppm workplace exposure ceiling (61 FR 54029, 64 FR 30410). The same industry-established acceptable exposure limits apply in this end-use.

(b) Ikon®B. *Ikon®B, a blend of trifluoroiodomethane (CF_3I), HFC–134a and HFC–152a, is acceptable as a substitute for CFC–12 in household refrigerators and freezers.* Ikon®B was listed as acceptable in various refrigeration and air conditioning end-uses in a December 6, 1999 SNAP notice (64 FR 68039). Fractionation and flammability testing have determined that although HFC–152a is flammable, Ikon®B as blended is not, and further testing has shown that it does not become flammable after leakage. Ikon®B has virtually no ozone depleting potential. It contains two constituents with moderate global warming potentials. The potential of these constituents for contributing to global warming may be mitigated in this end-use through the implementation of the venting prohibition under section 608(c)(2) of the Clean Air Act.

(c) Ikon®A. *Ikon®A, a blend of trifluoroiodomethane (CF_3I)* and HFC–152a, is acceptable as a substitute for CFC–12 in the following end-uses:

- Commercial comfort air conditioning;
- Industrial process refrigeration and air conditioning;
- Cold storage warehouses;
- Refrigerated transport;
- Retail food refrigeration;
- Vending machines;
- Water coolers;
- Commercial ice machines; and
- Household refrigerators and freezers.

Ikon®A, also known as Ikon-12 or Blend Zeta, was listed as acceptable as a substitute for CFC–12 in retrofitted and new motor vehicle air conditioners in a May 22, 1996 SNAP notice (61 FR 25585). Fractionation and flammability testing have determined that although HFC–152a is flammable, the blend is not flammable; further testing has shown that it does not become flammable after leakage. Ikon®A has virtually no ozone depleting potential. The blend does contain HFC–152a which has a global warming potential of 190 over a 100-year integrated time horizon. The potential of this constituent for contributing to global warming may be mitigated in each end-use through the implementation of the venting prohibition under section 608(c)(2) of the Clean Air Act.

(d) HFC–245fa. *HFC–245fa is acceptable as a substitute for CFC–11 in new commercial comfort air conditioning applications (commercial chillers).* HFC–245fa contains no chlorine or bromine; therefore, it has no ozone depletion potential. Although its 100-year global warming potential is approximately 1000, the potential of HFC–245fa to contribute to global warming may be mitigated in this end-use through the implementation of the venting prohibition under section 608(c)(2) of the Clean Air Act. HFC–245fa is also non-flammable. EPA anticipates that HFC–245fa will be used in such a manner so that any recommendations specified in the manufacturers' Material Safety Data Sheets (MSDSs) are followed. The Agency also expects that the workplace environmental exposure will not exceed the American Industrial Hygiene Association's (AIHA) limit of 300 ppm.

In 1994, the SNAP program developed a guidance document entitled ''Choosing the Optimal Chiller in the Face of a CFC Phaseout''. This guidance was written to assist building owners and operators making decisions on the retrofit or replacement of their existing chillers in light of the phaseout of CFCs. The guidance stresses that the optimal way to select new equipment is to consider a comprehensive set of criteria including ozone depletion potential, global warming potential, energy efficiency, toxicity, occupational exposure, consumer exposure, ecological effects, flammability and cost. It highlights that each refrigerant has advantages and disadvantages and that one option is not likely to satisfy the

optimal requirement for every circumstance.

EPA has determined that HFC–245fa is acceptable from an overall health and environmental perspective and may potentially play an important role in the phaseout of ozone depleting substances. However, it is imperative that building owners and operators evaluate refrigerants from a technical standpoint to determine which option is superior for their specific application. For example, a refrigerant may prove suitable and highly efficient for a particular chiller capacity range, but not necessarily for all ranges. To obtain copies of the EPA guidance mentioned above, technical information submitted by the manufacturers of HFC–245fa and industry expert evaluations of HFC–245fa, contact EPA's Air Docket at (202) 260–7548 (Reference A–91–42, IX–B–52 through 56).

(e) Small auxiliary power units which include an engine, electrical alternator, water pump, air conditioning compressor, and a heat exchanger that are used in tractor trailers in conjunction with passenger compartment climate control systems that use a SNAP-accepted refrigerant. *Small auxiliary power units which include an engine, electrical alternator, water pump, air conditioning compressor and a heat exchanger used in tractor trailers in conjunction with passenger compartment climate control systems that already use an acceptable substitute refrigerant, are acceptable as substitutes for CFC–12 in motor vehicle air conditioners.* These systems have been developed for use in heavy duty trucks that contain sleeper compartments. Currently these trucks must continually idle while the vehicle is parked and the driver is resting in the sleeper compartment, to power a conventional air-conditioner or heater when cooling or heating comfort is needed. These power units will allow the provision of cooling/heating comfort while the engine is off, and although the unit is powered by a small diesel engine, emissions are reduced dramatically.

The main engine of the truck operates the existing truck air conditioning and heating system in a normal manner when the engine is running. When air conditioning or heating is required and the main engine is not running, the auxiliary power unit operates the air conditioning or heating system. The unit includes its own engine, air conditioning compressor, alternator, water pump, and heat exchanger. The unit works in conjunction with the existing truck air conditioning and heating components to supply the desired air conditioning or heating capacity.

After reviewing the technology of the auxiliary power system submitted in the SNAP application, the SNAP review found no safety or environmental concerns associated with its use in trucks. EPA acknowledges the existence of such a system and recognizes the potential merits. This type of technology can significantly lower fuel consumption and reduce pollutant emissions of nitrous oxides, carbon monoxide, carbon dioxide, sulfuric oxides, and particulate matter.

B. Foam Blowing

1. Acceptable Substitutes

(a) Vacuum panels. *Vacuum panels are acceptable as substitutes for HCFC blown rigid polyurethane appliance foam.* EPA defines a substitute as ''any chemical, product substitute, or alternative manufacturing process'' (59 FR 13050). The Agency listed vacuum panels as acceptable substitutes for CFC–11 blown rigid polyurethane appliance foam on January 13, 1995 (60 FR 3318). Today's decision makes vacuum panels also acceptable as substitutes for HCFC blown polyurethane foam.

(b) 2-Chloropropane. *2-Chloropropane (isopropyl chloride) is acceptable as a substitute for HCFCs in rigid polyurethane and polyisocyanurate laminated boardstock foam.* This non-ozone-depleting chemical was listed as acceptable as a substitute for CFC–11 in rigid polyurethane and polyisocyanurate laminated boardstock foam and phenolic insulation board in the original SNAP rulemaking on March 18, 1994 (59 FR 13044). 2-Chloropropane has no global warming potential. An analysis of the decomposition products of 2-chloropropane shows that concentrations are well below the 1500 parts per million (ppm) limit that EPA has determined to be of concern. This analysis can be obtained through EPA's Air Docket at (202) 260–7548 (Reference A–91–42, IX–B–57). Although exposure to foam blown with 2-chloropropane poses essentially no risk to the consumer, exposure during manufacturing could pose a risk. Analysis of toxicity data available suggest an acceptable exposure limit of 350 ppm (8-hour Time Weighted Average). This analysis can also be obtained through EPA's Air Docket at (202) 260–7548 (Reference A–91–42, IX–B–58). Because 2-chloropropane is flammable, appropriate fire control measures should be in place throughout the foam manufacturing process including storage and handling of the chemical.

III. Additional Information

Contact the Stratospheric Protection Hotline at (800) 296–1996, Monday-Friday, between the hours of 10 a.m. and 4 p.m. (EST). For more information on the Agency's process for administering the SNAP program or criteria for evaluation of substitutes, refer to the original SNAP rulemaking published in the **Federal Register** on March 18, 1994 (59 FR 13044). Notices and rulemakings under the SNAP program, as well as all EPA publications on protection of stratospheric ozone, are available from EPA's Ozone Depletion World Wide Web site at ''http://www.epa.gov/ozone/title6/snap/'' and from the Stratospheric Protection Hotline whose number is listed above.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements.

Dated: June 2, 2000.

Paul Stolpman,

Director, Office of Atmospheric Programs, Office of Air and Radiation.

APPENDIX A: SUMMARY OF ACCEPTABLE DECISIONS

End-use	Substitute	Decision	Comments
Refrigeration and Air Conditioning			
Non-Mechanical Heat Transfer	HFC–4310mee for CFCs and HCFCs.	Acceptable	EPA expects that the company-established 200 ppm time-weighted average workplace exposure limit and 400 ppm workplace exposure ceiling will be met.

APPENDIX A: SUMMARY OF ACCEPTABLE DECISIONS—Continued

End-use	Substitute	Decision	Comments
Household Refrigerators and Freezers	Ikon® B for CFC–12	Acceptable	EPA expects that manufacturers, installers and servicers of refrigeration and air-conditioning systems will follow all applicable industry practices and technical standards, including but not limited to standards issued by the American Society of Heating, Refrigeration and Air-conditioning Engineers (ASHRAE), and that exposures will be kept within all applicable American Industrial Hygiene Association (AIHA) and American Conference of Governmental Industrial Hygienists (ACGIH) occupational exposure limits.
• Commercial Comfort Air Conditioning • Industrial Process Refrigeration and Air Conditioning • Cold Storage Warehouses • Refrigerated Transport • Retail Food Refrigeration • Vending Machines • Water Coolers • Commercial Ice Machines • Household Refrigerators and Freezers	Ikon® A for CFC–12	Acceptable	EPA expects that manufacturers, installers and servicers of refrigeration and air-conditioning systems will follow all applicable industry practices and technical standards, including but not limited to standards issued by the American Society of Heating, Refrigeration and Air-conditioning Engineers (ASHRAE), and that exposures will be kept within all applicable American Industrial Hygiene Association (AIHA) and American Conference of Governmental Industrial Hygienists (ACGIH) occupational exposure limits.
Commercial Comfort Air Conditioning	HFC–245fa. for CFC–11 (new only).	Acceptable	Building owners and operators should evaluate refrigerants from a technical standpoint to determine which option is superior for their specific application.
Small auxiliary power units which include an engine, electrical alternator, water pump, air conditioning compressor and a heat exchanger used in tractor trailers in conjunction with passenger compartment climate control systems that already use an acceptable substitute refrigerant.	CFC–12 in motor vehicle air conditioners.	Acceptable	EPA anticipates that installers and servicers of refrigeration and air-conditioning systems will follow all applicable standard industry practices and technical standards.
Foam Blowing			
Polyurethane Appliance Foam	Vacuum panels	Acceptable.	
Rigid Polyurethane and Polyisocyanurate Boardstock.	2-chloropropane	Acceptable	Analysis of toxicity data available suggest an acceptable exposure limit of 350 ppm (8-hour Time Weighted Average).

[FR Doc. 00–15299 Filed 6–16–00; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 000531162–0162–01; I.D. 042800B]

RIN 0648–AN49

Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery, Framework Adjustment 13; Northeast Multispecies Fishery, Framework Adjustment 34

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement measures contained in Framework Adjustment 13 to the Atlantic Sea Scallop Fishery Management Plan (FMP) and Framework Adjustment 34 to the Northeast Multispecies FMP. This final rule implements the 2000 Sea Scallop Exemption Program (Exemption Program), creates Sea Scallop Exemption Areas (Exemption Areas) in portions of multispecies Closed Area I (CA I), Closed Area II (CA II), and the Nantucket Lightship Closed Area (NLCA) and includes the following management measures: A possession limit of up to 10,000 lb (4,356.0 kg) of scallop meats per trip; a maximum number of trips for each area; an automatic minimum deduction of 10 days-at-sea (DAS) for each trip; a minimum mesh twine-top of 10 inches (25.40 cm); a yellowtail flounder total allowable catch (TAC) of 725 metric tons (mt) for CA I and CA II combined, and 50 mt for the NLCA; and an increase in the regulated species possession limit from 300 lb (136.1 kg) to 1,000 lb (435.6 kg) per trip, among other measures. In addition, this action modifies the scallop dredge gear stowage requirements and corrects and clarifies the ''end of the year DAS carryover'' provision for vessels participating in the limited access scallop fishery. The primary intent of this action is to provide a continuation and an expansion of a short-term strategy to allow scallop dredge vessels access to multispecies closed areas without

compromising multispecies and sea scallop rebuilding or habitat protection.

DATES: Effective June 15, 2000, except for § 648.57 introductory paragraphs (a) and (b), which becomes effective June 15, 2000, through March 1, 2001, and § 648.58(c)(3)(i) and (c)(3)(ii), which becomes effective June 14, 2000.

ADDRESSES: Copies of Framework Adjustment 13/Framework Adjustment 34 to the Atlantic Sea Scallop/Northeast Multispecies FMPs, its Environmental Assessment (EA), and regulatory impact review are available on request from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950. These documents are also available online at http://www.nefmc.org.

Comments regarding the collection-of-information requirements contained in this final rule should be sent to Patricia A. Kurkul, Regional Administrator, Northeast Region, One Blackburn Drive, Gloucester, MA 01930–2298, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: David M. Gouveia, Fishery Policy Analyst, 978–281–9280.

SUPPLEMENTARY INFORMATION: Based on results from the 23rd Stock Assessment Workshop and information obtained from a cooperative experimental research fishery conducted from August through October 1998, the Council developed, and NMFS approved, Framework Adjustment 11 to the Atlantic Sea Scallop FMP and Framework Adjustment 29 to the Northeast Multispecies FMP in June 1999, which implemented the 1999 Georges Bank Sea Scallop Exemption Program and provided sea scallop fishermen access to CA II. This action helped to reduce fishing effort in other scallop areas where the stock is dominated by smaller scallops by shifting effort into CA II where the scallop biomass and average individual size have increased dramatically since 1994, while maintaining conservation neutrality.

During the course of the 1999 Georges Bank Sea Scallop Exemption Program implemented under Frameworks 11/29 (June 15 through November 12, 1999), additional cooperative research was conducted by NMFS and the industry in CA I, CA II, and the NLCA. This research involved mapping the distribution and estimating the abundance of Atlantic sea scallops; determining the rate and distribution of finfish and invertebrate bycatches in the sea scallop fishery; testing new gear designs to reduce finfish bycatch rates; providing information on the potential habitat effects of the use of scallop dredge gear; and evaluating changes in catch-per-unit-effort. To the extent that the data from these research projects have been analyzed, this new information was incorporated into the development of Frameworks 13/34 and builds on the data obtained from the 1999 Georges Bank Sea Scallop Exemption Program.

To provide an additional year of access to areas of high scallop biomass, this action allows sea scallop dredge vessels access to portions of CA I, CA II, and the NLCA during the period from June 15, 2000, through December 31, 2000, and establishes a sea scallop TAC of 8,664 mt to be distributed among the three closure areas. To help fund the cost of observers, an additional 87 mt above the TAC together with another 87 mt set aside from the TAC, for a total of 174 mt, is available. In addition, 87 mt is set aside from the sea scallop TAC to help defray the cost of sea scallop research. After deducting the two 87 mt set asides, the resulting commercial scallop TAC available is 8,490 mt (2,934 for CA II; 2,445 mt for the NLCA; and 3,111 mt for CA I).

As in Frameworks 11/29, this action opens only certain portions of the closed areas to minimize the impact on finfish bycatch and habitat. The Council's Habitat Committee recommended that, based on current essential fish habitat (EFH) considerations, only areas south of 41°30' N. lat. in CA II, only areas north of 41°07' N. lat. in CA I, and only areas north of 40°30' N. lat. and east of the 13900 loran line in the NLCA should be considered for opening to scallop dredge vessels. This action adopts the Habitat Committee's recommended area openings for all three areas.

To minimize yellowtail flounder bycatch, this action implements a Georges Bank yellowtail flounder TAC of 757 mt (a combined TAC for CA I and CA II), and a Southern New England yellowtail flounder TAC of 50 mt for NLCA. Once these yellowtail flounder TACs are projected to be reached, scallop fishery access to the respective closed areas will be terminated. The yellowtail flounder TAC is estimated using the information obtained from observed trips in the Exemption Program. One percent from each yellowtail flounder TAC is set aside to account for yellowtail flounder incidental catch that may occur on vessels conducting sea scallop research activities. This will allow sea scallop research activities to continue, should the Exemption Program be terminated due to the harvest of the overall yellowtail flounder TAC.

This action expands upon the mechanism in the 1999 Georges Bank Sea Scallop Exemption Program to conduct sea scallop research utilizing the TAC set aside for this purpose by adopting a more flexible design to provide applicants more options in conducting their projects. For example, this action will allow sea scallop research activities and commercial trips to be conducted separately, rather than on the same trip as implemented under the 1999 Georges Bank Sea Scallop Exemption Program. In addition, this action requires that specific elements be included in proposals submitted in response to the Request for Proposal and a report of the project results submitted to the Council and NMFS. Successful applicants will receive grant awards to help defray the costs of the sea scallop research. Grant awards will be made consistent with Department of Commerce grant policy and procedures. Amounts over the trip limits for sea scallop meats to be allocated for defraying project costs shall be limited by area up to 30 mt for CA II, 25 mt for the NLCA, and 32 mt for CA I.

All limited access scallop vessels, including vessels that hold a scallop ''Confirmation of Permit History,'' are eligible to fish for the sea scallop TAC specified for each Exemption Area. Full-time and part-time scallop vessels are allowed up to three CA II trips, two CA I trips, and one NLCA trip. Vessels permitted in the Occasional permit category are allocated only one trip in the area of their choice. All scallop vessels are allowed to possess up to 10,000 lb (4,356.0 kg) of scallop meats per trip. Note that the 10,000 lb (4,356.0 kg) of meats per trip is a possession limit, rather than just a landing limit, to help ensure the enforceability of this measure.

All scallop vessels fishing in the Exemption Program must have installed on board an operational Vessel Monitoring System (VMS) unit that meets the minimum performance criteria as specified in the regulations (Occasional permitted vessels are the only limited access scallop vessels not currently required to have a VMS.). Scallop vessels planning to fish in an Exemption Area must so declare by notifying the Administrator, Northeast Region, NMFS (Regional Administrator), through the VMS. For each trip declared, a minimum of 10 DAS will automatically be deducted.

Each vessel operator is required to inform NMFS of his/her intention to fish in the Exemption Areas at least 15

days prior to the opening of each Exemption Area season through the VMS e-mail system to facilitate placement of observers. This, along with the following information, must be reported at least 15 days prior to the opening of each Exemption Area season: Vessel name and permit number, owner and operator's name, owner and operator's phone numbers, and number of trips anticipated for the Exemption Area in question. In addition, vessels must provide notice to NMFS as to the time and port of departure at least 5 working days prior to the beginning of any trip on which it declares into the Exemption Program. Vessels will be provided additional information by mail regarding all notification requirements.

Because of the late publication of this final rule implementing the 15-day advance notification requirement, there is insufficient time to provide for the 15-day advance notification for Closed Area II, which is scheduled to reopen on June 15th. Therefore, NMFS is waiving the 15-day advance notification for Closed Area II, only. NMFS requests that vessel operators intending to fish in Closed Area II provide notification to NMFS as soon as possible.

Each vessel participating in this Exemption Program is required to report information on a daily basis through the VMS. On all trips to an Exemption Area, vessels must report their daily pounds (kg) of scallop meats kept and the Fishing Vessel Trip Report page number corresponding to the respective Exemption Area trip. In addition, vessels on observed trips must provide a separate report of the daily pounds (kg) of scallop meats kept and the pounds (kg) of yellowtail flounder caught on tows that were observed.

Measures are included to improve the enforceability of this program. One measure is an increase in the VMS polling frequency. For the duration of the Exemption Program implemented by this action, all limited access scallop vessels equipped with a VMS unit will be polled twice per hour, regardless of whether the vessel is enrolled in the Exemption Program. Based on the increase in polling, the Council recommended and NMFS approved a decision to eliminate the buffer zone that was put into place last year. In addition, the openings of the closed areas will be sequential rather than concurrent. The seasonal openings for this year's Exemption Areas are as follows: June 15 through August 14 for CA II; August 15 through September 30 for the NLCA; and October 1 through December 31, 2000, for CA I.

After taking into account data on the number of eligible vessels participating and the total number of trips taken, the Regional Administrator may adjust the sea scallop possession limit for the NLCA and/or the CA I Exemption Areas during January 2001 for full-time and part-time limited access sea scallop vessels and/or allocate one or more additional trips, if a sufficient amount of the sea scallop target TAC and yellowtail flounder TAC remains to warrant such an adjustment or allocation, given the likelihood of exceeding the sea scallop TAC. Occasional permitted vessels would not be allocated an additional trip.

At the discretion of the Regional Administrator, scallop vessels may be allocated an additional amount of sea scallops, not to exceed a cumulative total of 60 mt in CA II, 64 mt in CA I, and 50 mt in the NLCA, respectively, for each trip on which an observer is taken, to help fund the cost of observers. The vessel owner will be responsible for paying for the cost of the observer, regardless of whether any scallops are caught on the trip.

This action also increases the regulated multispecies incidental catch allowance from 300 lb (136.1 kg) to 1,000 lb (453.6 kg) per trip for scallop vessels when fishing under the Exemption Program and authorizes the Regional Administrator to make in-season adjustments, if necessary, to reduce regulatory discards. Because vessels are expected to catch more groundfish (especially yellowtail flounder) in the Exemption Areas than outside those areas, increasing the allowance of regulated species will help reduce discards. In addition, vessels that have an observer on board will be allowed to retain all regulated species caught, provided the fish caught in excess of the possession limit are donated to a bonafide charity.

Vessels that have declared a trip under the Exemption Program are prohibited from possessing more than 50 U.S. bushels (400 lb (181.4 kg) of meats) of shell stock when outside of the designated Exemption Area specified in this framework. This 400–lb (181.4-kg) scallop meat limit for shell stock is considered part of the 10,000-lb (4,536.0-kg) meat weight possession limit. A limit on the amount of sea scallops landed in the shell is a necessary enforcement tool for purposes of monitoring the 10,000-lb (4,536.0-kg) meat weight possession limit requirement. Allowing vessels to retain a relatively minor amount of shell stock will help satisfy a market for large, live scallops, yet not compromise the enforceability of the possession limit.

All scallop vessels, including those currently fishing with nets, that are fishing under the Exemption Program, must use scallop dredge gear that conforms to the current sea scallop dredge vessel gear restrictions specified in § 648.51, with the exception of the twine top mesh size restrictions. For vessels fishing in the Exemption Program, twine tops must have a minimum mesh size of 10–inch (25.40–cm) square or diamond mesh. The purpose of increasing the minimum twine top mesh size measurement from 8 inches (20.32 cm) outside the closed areas to 10 inches (25.40 cm) inside the closed areas is to reduce bycatch of groundfish and other finfish. Recent research demonstrates that the 10 inch mesh size may significantly reduce bycatch of certain species, especially flatfish species.

In response to safety concerns raised by industry, this final rule also implements a mechanism for the modification to the current stowage provision for dredge gear vessels and will allow the Regional Administrator to authorize other methods of gear stowage. This modification allows scallop dredge gear to be stowed in a safer manner while not compromising enforcement. This provision will remain in place beyond the closure of the Exemption Program. In addition, gear stowage provisions previously contained in §§ 648.57 introductory paragraphs (a) and (b), 648.80(a)(2)(iii), (b)(2)(iii), (b)(6)(i)(C), and (b)(9)(i)(E), 648.81(d) and the removal of paragraph (e), 648.82(k)(1)(iv)(A), 648.86(b)(3), (b)(4), (d)(1)(i), (d)(1)(ii), and (d)(1)(iii), 648.87 introductory text to paragraphs (a) and (b), 648.89(a), 648.91(c)(2)(ii), and § 648.94(e) have been consolidated and are now contained in § 648.23.

The Northeast multispecies and monkfish regulations contain a provision that restricts vessels that held a Confirmation of Permit History for the entire fishing year preceding the carry-over year, from carrying over unused DAS from one year to the next. However, NMFS inadvertently omitted this restriction in the end-of-the-year DAS carry-over provision. This final rule corrects and clarifies the end-of-the-year DAS carry-over provision for vessels participating in the limited access scallop fishery to make it consistent with the DAS carry-over provisions contained in the Northeast multispecies and monkfish fisheries.

Finally, vessels fishing under the Exemption Program are prohibited from off loading their scallop catch at more than one location. This measure will help in monitoring the TAC, as well as aid enforcement in tracking landings and in enforcing the trip limit.

Disapproved Measure

The framework document for this action proposes to allow General Category permitted vessels to fish for scallops in portions of the NLCA and CA I. The General Category fleet would have been allocated 5 percent of the total scallop TAC and would have been authorized to retain no more than 400 lb (174.2 kg) of scallop meats per Exemption Program trip. Retention of regulated multispecies would have been prohibited. In addition, General Category vessels would have been required to obtain and operate a VMS unit and would have been restricted to one dredge no larger than 10.5 ft (3.2 m) with 10-inch (25.40-cm) mesh twine top.

Because this measure would create significant enforcement and administrative concerns, it violates section 303(a)(1)(A) of the Magnuson-Stevens Act and national standard 7. National standard 7 requires that conservation and management measures minimize costs where practicable. The General Category permit, an open access permit, was originally developed by the Council to allow vessels not qualified for a limited access scallop permit to retain an incidental catch of scallops. As an open access permit, there is no limit on the number of vessels that could obtain this permit, thus creating an enforcement burden due to the potential of greatly expanding the number of boats that may fish in this program. In addition, monitoring of a separate TAC for these vessels would be extremely difficult. Therefore, NMFS disapproved this measure.

Abbreviated Rulemaking

NMFS is making these revisions to the regulations under the framework abbreviated rulemaking procedure codified at 50 CFR part 648, subpart F. This procedure requires the Council, when making specifically allowed adjustments to the FMP, to develop and analyze the actions over the span of at least two Council meetings. The Council must provide the public with advance notice of both the proposals and the analysis, and an opportunity to comment on them prior to and at a second Council meeting. Upon review of the analysis and public comment, the Council may recommend to the Regional Administrator that the measures be published as a final rule if certain conditions are met. NMFS may publish the measures as a final rule, or as a proposed rule if additional public comment is needed.

The public was provided the opportunity to express comments on allowing access by scallop vessels into the multispecies closed areas at numerous meetings. The following list includes all meetings, including plan development team meetings, at which this action was on the agenda, discussed, and public comment was heard:

Date	Meeting
1999	
May 20	Invertebrate Assessment Sub-Committee
June 2	Scallop Program Development Team (PDT)
June 21–25	Stock Assessment Review Committee
July 7–8	Scallop PDT
July 29–30	Scallop PDT
August 24	Scallop PDT
September 9	Scallop Advisory Panel
September 16–17	Scientific and Statistical Committee
September 10	Scallop Oversight Committee
September 22	Council
September 28–29	Scallop Oversight Committee
October 6–7	Scallop PDT
October 6	Habitat Technical Team
October 18	Scallop PDT
October 19	Habitat Committee
November 8	Research Steering Committee
November 10	Multispecies Oversight Committee
November 12	Scallop Oversight Committee
November 15	Gear Conflict Committee
November 15	Enforcement Committee
November 17	Council
December 7–8	Multispecies PDT
December 13	Multispecies Oversight Committee
2000	
January 10–11	Scallop Oversight Committee
January 14	Multispecies Oversight Committee
January 20	Council

Documents summarizing the Council's proposed action, and the analysis of biological and economic impacts of this and alternative actions, were available for public review one week prior to the final Council meeting, as is required under the framework adjustment process. Written and oral comments were accepted up to and during that meeting.

Comments and Responses

Comment 1: Several commenters stated that this action should remain conservation neutral, i.e., there should be no net increase in fishing mortality rate (F) for sea scallops.

Response: Conservation neutrality means that F for the sea scallop resource should not rise above the annual F set by Amendment 7 to the Atlantic Sea Scallop FMP. The framework analyses demonstrate that total F will not increase, except in the unlikely event that a large portion of inactive vessels, including vessels that hold a Confirmation of Permit History, begin fishing.

Comment 2: Several comments were received that viewed the reopening of the closed areas as shortsighted, in that

several important fishery resources will be negatively impacted by this action.

Response: Although no specific fishery resource was identified by the commenter, NMFS has concluded that the action does not negatively impact any other resources. The EA concludes that there will be no net increase in F for scallops. One of the more critical groundfish stocks, Georges Bank yellowtail flounder, has recovered considerably from its once highly depleted condition. Still, continued rebuilding of the Georges Bank yellowtail flounder stock is necessary and there is a high level of concern over the low stock size of the Cape Cod and Southern New England yellowtail flounder stocks. This action takes the necessary steps to protect these valuable resources through implementation of TAC levels, which, when reached, will terminate the Exemption Program. The action also promotes fishing effort reduction in areas where scallops are depleted, and increases meat yield. The selection of the areas to be reopened under the Exemption Program addresses habitat concerns by keeping some of the more complex bottom areas within the groundfish closed areas closed. Additionally, this action promotes rebuilding of the scallop resource by reducing effort on small, fast-growing scallops.

Comment 3: Several commenters noted that the closed areas were closed to scallop dredge gear partly because this gear disrupts spawning activity of groundfish.

Response: This action restricts access by scallop dredge vessels into the closed areas to a time when groundfish spawning activity is considered to be minimal (i.e., June 15 through August 14 for CA II; August 15 through September 30 for the NLCA; and October 1 through December 31, 2000, for CA I).

Comment 4: Some commenters stated that any economic gain derived from scallop fishing in the groundfish closed areas will be offset or lost by the setback to cod, yellowtail flounder, and other recovering species.

Response: This action sets yellowtail flounder TAC levels for Exemption Area fisheries, which, when reached, trigger the termination of the respective Exemption Area fisheries. The yellowtail flounder TAC levels will ensure that the Exemption Area fisheries do not cause a setback to that species' rebuilding schedule. Cod and haddock do not appear to be vulnerable in any significant way to scallop fishing with dredges within the Exemption Areas during the specified fishing seasons. Furthermore, the minimum mesh twine-top size and the expected effort transfers from areas now open to scallop fishing will limit the impacts on other species. Suspending the fisheries when certain thresholds are met and requiring more restrictive fishing gear when fishing in the Exemption Areas will mitigate the negative impacts on all species, particularly yellowtail flounder, even though an insignificant net increase in mortality is expected.

Comment 5: Because scallop fishers harvested significant amounts of yellowtail flounder in the 1999 Georges Bank Sea Scallop Exemption Program, as evidenced by the termination of the fishery when the yellowtail flounder TAC was taken, several commenters stated that the Council's analysis of the likely significant impact on overfished groundfish stocks is insufficient.

Response: The yellowtail flounder TAC levels are designed to ensure adequate protection of the yellowtail flounder stocks. Provided each respective Exemption Area fishery is terminated when its TAC level is reached, as required by this action, the stocks should receive adequate protection.

Comment 6: Opening the closed areas to scalloping and maintaining scallopers' DAS at current levels will undercut current and proposed protections afforded EFH in New England waters. In its Omnibus EFH Amendment (64 FR 19503, April 21, 1999), the Council noted that the year-round groundfish closed areas and proposed reductions in scallop DAS protect and conserve EFH. The Council relied on these measures in the Omnibus EFH Amendment to satisfy its duty under the Magnuson-Stevens Act to minimize adverse effects of fishing on EFH.

Response: This action re-opens only portions of the closed areas where habitat is less likely to be adversely impacted by scallop gear. The benthos of the re-opened portion of CA II primarily consists of sand and shell in a high energy environment. The habitat in this area is not as complex and diverse as the habitats to the north, which will remain closed to scallop fishing. The reopened portion of CA I, based on the information available to the Council, is believed to be comprised primarily of sand, with no known areas of hard bottom. This type of habitat is less sensitive to the impacts associated with scallop fishing than the gravel and hard-bottom habitats south of the area that will not be opened to scallop fishing. The re-opened portion of the NCLA, based on the information available to the Council, is believed to be primarily comprised of relatively flat sand.

Although this action will increase habitat impacts in the areas to be opened for scallop fishing, the compensating effect will be to reduce scallop fishing effort in areas that are now open. The action is expected to reduce overall scallop fishing time by 22 percent. Some of the areas currently open to scallop fishing have significantly more complex and diverse habitat than that in the portions of the groundfish closed areas to be reopened to scallop fishing. The biological impacts of this trade-off are discussed in the EA and, on balance, this action was determined to be consistent with EFH objectives and to minimize the impacts of fishing on EFH to the extent practicable.

Additionally, NMFS is recommending to the Council who will conduct the initial review of the research proposals that a portion of the scallop TAC set aside for sea scallop research be considered to fund experiments to help identify more selective fishing gears or gears that have less habitat impacts.

Comment 7: The absence of habitat data from research conducted during last year's opening of CA II limited the Council in properly evaluating the environmental impacts of this proposed re-opening. Therefore, the Council continues to be unable to answer fundamental questions necessary to assess properly the EFH and environmental impacts of the last year's partial opening of CA II.

Response: Under National Standard 2 of the Magnuson-Stevens Act, the Council and NMFS are required to use the best scientific information available. During last year's CA II opening, additional cooperative research was conducted by NMFS and industry in CA I, CA II, and the NLCA. From the research conducted, information was gained on the potential habitat effects of the use of scallop dredge gear. However, since this action was developed at the same time the habitat research was being conducted, and a substantial amount of time and resources were needed to adequately analyze the data, the data analysis associated with the habitat studies was not completed in time to be incorporated into this action. The Council's Habitat Committee did, however, use the best available scientific information available in developing the action within the time period for developing the action. The Habitat Committee utilized sidescan sonar information to develop the Exemption Area alternatives chosen by the Council. The Council intends to use the habitat data generated from last

year's opening, along with any new habitat information, when developing a more permanent rotational scallop fishing strategy in Amendment 10 to the Atlantic Sea Scallop FMP.

Comment 8: If the Council allows scalloping fishing in these areas, significant environmental impacts can be expected, not just proximate to, but actually in ''ecologically critical areas.'' In fact, the Council has already identified particularly ecologically important areas within EFH located in CA II and designated such areas as a habitat area of particular concern (HAPC) for juvenile cod.

Response: The term ''ecologically critical areas'' is not defined, nor does it have any meaning analogous to ''HAPC'' or ''EFH.'' There is no reference to this term in the Council's Omnibus EFH Amendment, as implied by the comment. The HAPC in CA II is not near the area where scalloping will be allowed.

Comment 9: Some commenters expressed concern regarding the destruction to the ocean floor that could be caused by scallop dredge vessels in the closed areas. In particular, scallop dredging has a significant effect on gravel and hard bottom habitats.

Response: See the response to Comment 6.

Comment 10: Opening the closed areas and failing to reduce scallop DAS without additional scallop closures or measures with equal habitat benefits increases fishing effects on EFH, an environmental impact that must be analyzed pursuant to National Environmental Policy Act and the EFH Omnibus Amendment. The Council has not sufficiently analyzed the likely significant impact on EFH.

Response: These impacts are analyzed, to the extent possible, in the EA and, pursuant to the EFH interim final rule (62 FR 66531, December 19, 1997), in the EFH Assessment. The EA estimates a 22-percent reduction in bottom time needed to harvest the same amount of sea scallops within the current closed areas as compared to no access to closed areas. See also the response to Comment 6.

Comment 11: Little is known about the habitats within the portions of CA I and the NLCA scheduled to be re-opened. Limited sampling creates a real risk that hard-bottom habitats, not identified, exist in these areas. Little is known about the benthic and pelagic ecosystems that rely on these habitats and how they are affected indirectly by scallop dredging. The Council should have considered postponing scallopers' access to the closed areas until it can collect and analyze reliable data and accurate geological surveys.

Response: The Council based this action on the best scientific information available, as required by National Standard 2 of the Magnuson-Stevens Act. All relevant sources of scientific information were used in the Council's deliberations, including a review of available sidescan sonar information reflecting bottom types in CA I. Other considerations and determinations were made as discussed in the response to Comment 6.

Comment 12: The EA must consider reasonable alternatives to the proposed action, including the no-action alternative, that have the potential to mitigate the potential negative impacts of the action. At a minimum, the Council and NMFS should consider the no-action alternative, allowing scallopers to fish only in certain areas, rather than in all closed areas; for example, the Council should have considered allowing scallop fishing only in areas where sufficient data exist to demonstrate that they contain EFH that is less severely affected by scallop dredging (such as soft sediments and high energy environments).

Response: The Council did consider all these alternatives. In effect, it chose not to open all the areas, and to open areas with habitat less severely affected by scallop dredging by limiting the exempted areas within the overall closed areas.

Comment 13: The Council should have considered requiring slower towing speeds and full stops before hauling the dredge of the bottom to minimize bycatch of groundfish and other species.

Response: During the course of last year's CA II opening, as part of a cooperative research project, tow speed, haul-back speed, and tow scope were studied. According to industry advisors who participated in this research, preliminary tests indicated that those measures would be ineffective. The measures also would be unenforceable. However, industry did employ voluntary fishing practices in last year's Exemption Program that reduced its yellowtail flounder catch and is expected to repeat this practice again this year.

Comment 14: The Council should have considered requiring at least 25–percent observer coverage on scallop vessels fishing under the Exemption Program.

Response: The Council did adopt a goal of 25–percent observer coverage for each area, to be funded by the participants through a TAC set aside. Both the Council and NMFS agree that this program should have the maximum observer coverage practicable. However, due to the high costs of observer programs, the additional administrative burden that would be placed on NMFS, and the uncertainty of NMFS' ability to provide 25-percent observer coverage, the level of observer coverage was expressed as a goal, rather than as a requirement.

Comment 15: Many industry participants suggested that the Council should only consider access to the closed areas in the context of a comprehensive rotational area management strategy.

Response: The intent of this action is to provide a continuation and an expansion of a short-term strategy to allow scallop dredge vessels access to multispecies closed areas. Amendment 10 to the Atlantic Sea Scallop FMP, which is currently under development by the Council, will recommend a long-term sea scallop rotational harvest strategy. The scallop fisheries in the re-opened areas will provide information necessary to make this strategy possible.

Furthermore, this action meets the goals of conservation neutrality and of increasing yield per recruit in terms of managing scallops for any future area rotation strategy and therefore is fully consistent with the objectives of the Atlantic Sea Scallop FMP. To delay this action until the implementation of Amendment 10 to the Atlantic Sea Scallop FMP would deprive the public of substantial economic benefits: An estimated $22 million in consumer surplus and an estimated $26 million in producer surplus.

Comment 16: General category vessels should be allowed to retain more that the 400-lb (181.4-kg) scallop possession limit. The limit makes it economically unfeasible for them to fish in the closed areas, and it is unfair that limited access vessels have a much higher, 10,000-lb (4,356-kg) possession limit.

Response: NMFS has disapproved the provision that would have allowed General Category vessels access to the closed areas because it would create a significant enforcement and administrative burden and thus violate National Standard 7.

In deliberating about whether to increase the possession limit for General Category permit holders, the Council considered the original reason for establishing a General Category permit and 400-lb (181.4-kg) scallop possession limit. This permit was designed to meet the needs of fishermen who catch scallops in small-scale fisheries and/or in combination with other fisheries. For this reason, General Category permit holders are exempt from the DAS

restrictions to which limited access scallop vessels are subject.

Comment 17: Some industry members commented that the sea scallop management measures proposed for the Exemption Program are too restrictive and that fishing effort, consequently, will remain in the open areas.

Response: The Council has accounted for the benefits, costs, and risks associated with the closed area fisheries in this action. The EA shows that it would be more economical for scallopers to fish in the Exemption Program than in the existing open areas, due to lower fishing costs and higher prices for large scallops.

Comment 18: Several industry members commented that the yellowtail flounder TAC will likely force an early closure of the Exempted Area fisheries.

Response: An experimental fishery conducted in CA I and the NLCA in 1999 showed very low yellowtail flounder catches in the scallop fishery. Using these rates, the analysis indicated that a closure in the NLCA fishery due to the yellowtail flounder TAC being exceeded is not likely. The combined CA I and CA II yellowtail flounder TAC is about 80 percent higher than the limit in 1999 due to improved yellowtail flounder resource conditions. Additionally, this action includes a minimum twine-top mesh size requirement for scallop dredge vessels that declare into the Exemption Program, which is expected to reduce incidental catch of yellowtail flounder substantially.

Comment 19: Scallop industry members commented that the groundfish closure areas comprise about one-half of the Georges Bank scallop grounds, by area, and that scallop vessels should be able to regain access to these areas.

Response: Under current conditions, the biomass within the closed areas on Georges Bank includes much more than one-half of the scallop biomass of the Georges Bank stock. This imbalance has arisen mainly due to the combination of very high fishing mortality on scallops within areas that have remained open to scallop fishing, while closed areas designed primarily to protect groundfish also protected sea scallops because of the prohibition on use of dredges.

The Council is considering under Amendment 10 to the Atlantic Sea Scallop FMP the extent to which scallopers should be allowed into the closed areas if it does not jeopardize the rebuilding schedule for groundfish or scallops and does not cause substantial adverse impacts on habitat. This action allows access to a portion of the closed areas under a program that meets these conditions.

Comment 20: Industry commented that gear research for the purposes of reducing bycatch should be encouraged and suggested that a portion of the TAC be used to fund this.

Response: This action sets aside 1 percent of the scallop target TAC (87 mt) as a means to fund projects to examine new gears and/or gear modifications that would reduce incidental catch/bycatch by scallop dredge vessels.

Comment 21: Due to the potential for gear conflicts, lobster industry members requested that the reopened areas be modified to exclude areas with concentrations of lobster pot gear.

Response: Since their inception in 1994, the closed areas on Georges Bank and Nantucket Shoals have become viewed as prime lobster fishing grounds. The closed areas provide a place for lobster fishing with little danger of losing gear to mobile fishing gears. In the spring of 1999, the Council's Gear Conflict Committee held a meeting to identify the areas and time periods most valuable to lobster trap fishermen in the NLCA and CA II. The Committee did not ask for industry input on CA I because at that time, the opening of CA I was not being contemplated by the Council. However, during the development of this action, the Council consulted with the Atlantic Offshore Lobstermen's Association (AOLA) concerning lobster activity in CA I. As was the case with the NLCA and CA II, the boundaries within CA I were selected by the Council to avoid the highest concentration of lobster gear in each of the proposed closed area.

Comment 22: Concern was expressed that the Exemption Program would encourage a ''derby-style'' fishery, especially with an inseason adjustment.

Response: This was not a significant problem in the 1999 Georges Bank Sea Scallop Exemption Program and is less likely to be a problem in fishing year 2000 because of the limited period (January 2001) and area (CA I and the NLCA) for which additional trips may be authorized. However, if a derby-style fishery does ensue, the scallop possession limit to some extent addresses this concern.

Comment 23: The high biomass of scallops in the groundfish closed areas represents an important opportunity to learn how to manage an essentially rebuilt stock for optimum yield, as required by National Standard 1 under the Magnuson-Stevens Act.

Response: Additional data collected during the Exemption Program could be an important source of information in developing an area rotation management strategy, contemplated for Amendment 10 to the Atlantic Sea Scallop FMP.

Comment 24: Some commenters felt that early access to the CA II is necessary to avoid adverse fall weather and corresponding safety issues, as well as to improve scallop yield.

Response: This action allows access for scallop fishing in Closed Area II starting June 15, 2000. Although full-time scallop vessels generally fish year-round, part-time and occasional vessels, which tend to be smaller and less seaworthy, would benefit from this early opening since it allows them to take all of their trips during the summer months when weather is usually more favorable and scallop meat yields are high. Smaller vessels also would have access to CA I and the NLCA, which are much closer to shore, later in the year when weather conditions may be more of a concern.

Comment 25: Some individuals noted that illegal transfers of scallops caught in CA II reportedly occurred with regularity.

Response: The enforceability of this action is strengthened by the increase in VMS polling frequency to twice per hour for all scallop vessels fishing under a scallop DAS, whether or not they participate in the Exemption Program, and by staggering access to the closed areas so that only one area is open at one time.

Comment 26: Area closure boundaries should be straight north-south and east-west, using latitude and longitude, and the areas should be as large as possible.

Response: The Council carefully considered this. However, habitat, bycatch, and potential gear conflict concerns constrained the configuration of the Exemption Area boundaries.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), finds that, because public meetings held by the Council to discuss the management measures implemented by this final rule provided adequate prior notice and opportunity for public comment, further notice and opportunity to comment on this final rule is unnecessary. Comments were received from members of the public and are responded to in the preamble of this final rule. Also, because the technical amendments to this final rule merely remove outdated regulatory text and add cross-references to the gear stowage requirements that were revised by the Regional Administrator due to safety concerns expressed by industry, they do not effect a substantive change to the existing regulations; thus, prior notice and opportunity for public comment are

unnecessary. Therefore, the AA, under 5 U.S.C. 553(b)(B), finds good cause exists to waive prior notice and additional opportunity for public comment.

It is unnecessary and contrary to the public interest to delay for 30 days the effective date provisions for a possession limit of up to 10,000 lb (4,356.0 kg) of scallop meats per trip; the maximum number of trips for each area; an automatic minimum deduction of 10 DAS for each trip; a minimum mesh twine-top of 10 inches; a yellowtail flounder TAC of 757 metric tons (MT) for CA I and CA II combined and 50 MT for the NLCA; and an increase in the regulated species possession limit from 300 lb (136.1 kg) to 1,000 lb (435.6 kg) per trip among other measures. On March 3, 1999, NMFS implemented Amendment 7 to the Atlantic Sea Scallop FMP (64 FR 14835). This amendment, which addressed the new Sustainable Fisheries Act requirements, substantially reduced the level of fishing for scallops through the year 2008 by revising the current fishing effort reduction schedule. Although a less severe reduction was implemented in Framework Adjustment 12 to the Atlantic Sea Scallop FMP (65 FR 11478, March 3, 2000) for fishing year 2000, failure to allow scallop vessels access to Closed Area II on June 15, when finfish bycatch concerns would be mitigated to the largest extent possible, will increase costs to scallop vessels fishing in currently open areas where scallop biomass is low and where the stock is dominated by small scallops. Furthermore, an earlier opening date will allow more time for smaller vessels to fish their allotted trips during good weather. For these reasons, the AA finds, under 5 U.S.C. 553(d)(3), good cause not to delay for 30 days the effective date of these provisions.

Because the revised Sea Scallop Exemption Program limits in § 648.58 and related prohibitions in § 648.14(a)(38), (a)(40), (a)(90) and (h)(27), and the revisions to §§ 648.17(c), 648.51(b)(2)(i) and (b)(2)(ii), 648.52(c), and (b)(9)(i)(E), 648.81(a)(1), (b)(1), (c)(1), 648.86(a)(2)(iii), and 648.88(c) relieve restrictions, under 5 U.S.C. 553(d)(1) they are not subject to a 30-day delay in effectiveness.

Implementation of the ''end of the year DAS carry-over'' provision for vessels participating in the limited access scallop fishery contained in § 648.53(d) clarifies the intent of previously issued regulations to make the DAS carry-over provision for the scallop fishery consistent with those provisions contained in the Northeast multispecies and monkfish regulations. This classification does not effect a substantive change in the management of the fishery; therefore, prior notice and opportunity for comment and delay in the effectiveness of § 648.53(d) are not required under 5 U.S.C. 553.

In addition, the implementation of the revised stowage provisions for dredge gear vessels will allow scallop dredge gear to be stowed in a safer manner while not compromising enforcement. These provisions are contained in § 648.23(b) and (b)(1) through (b)(4) and related provisions containing cross references to the stowage provisions contained in §§ 648.57 introductory paragraphs (a) and (b), 648.80(a)(2)(iii), (b)(2)(iii), (b)(6)(i)(C), and (b)(9)(i)(E), 648.81(d) and the removal of paragraph (e), 648.82(k)(1)(iv)(A), 648.86(b)(3), (b)(4), (d)(1)(i), (d)(1)(ii), and (d)(1)(iii), 648.87 introductory text to paragraphs (a) and (b), 648.89(a), 648.91(c)(2)(ii), and 648.94(e). Because this revised stowage provisions relieve restrictions and will remain in place beyond the closure of the Sea Scallop Exemption Program, under section 553(d)(1) they are not subject to a 30-day delay in effectiveness.

Because a general notice of proposed rulemaking is not required under 5 U.S.C. 533, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable. While a regulatory flexibility analysis is not required and none has been prepared, the economic impacts on affected fishers and alternatives to mitigate such impacts were considered by the Council and NMFS. The primary intent of this action is to allow scallop vessels an opportunity to remain economically viable, while ensuring that the fishing mortality for the entire sea scallop stock does not exceed the F target of 0.34 in the FMP for fishing year 2000. A copy of the analysis for Frameworks 13/34 may be obtained from the Council (see **ADDRESSES**).

This final rule has been determined to be not significant for the purposes of Executive Order 12866.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid Office of Management and Budget (OMB) control number.

This final rule contains collection-of-information requirements subject to the Paperwork Reduction Act. These requirements have been approved by OMB. The OMB Control numbers and estimated response times are as follow:

1. Reporting of intention to fish in the Exemption Program through the VMS e-mail messaging system (§ 648.58(c)(3)(i)) approved under 0648–0416 at 2 minutes/response.

2. Notice requirements for observer deployment (§ 648.58(c)(3)(ii)) approved under 0648-0416 at 2 minutes/response.

3. Daily reporting of sea scallops kept and Fishing Vessel Trip Report page number and, for observed trips, sea scallops kept, Fishing Vessel Trip Report page number and yellowtail flounder caught on observed tows, through the VMS e-mail messaging system for vessels fishing in the Scallop Exemption Program (§ 648.58(c)(10)) approved under 0648-0416 at 10 minutes/response.

4. VMS polling frequency (§ 648.58(h)) approved under 0648-0307 and 0648-0416 at 30 seconds/response.

5. Installation of a VMS unit on board the vessel (§ 648.10(b)) approved under 0648-0307 and 0648-0416 at 1 hour/response.

6. Declaration into the Exemption Program through the VMS prior to leaving the dock (§ 648.58(c)(3)(iii)) approved under 0648-0202 at 2 minutes/response.

7. Transit notifications (§ 648.86(b)(3)) approved under 0648-0202 at 1 minute/response.

The estimated response time includes the time needed for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspect of the data requirements, including suggestions for reducing the burden, to NMFS and OMB (see **ADDRESSES**).

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: June 14, 2000.

Andrew A. Rosenberg,

Deputy Assistant Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

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

2. In § 648.14, paragraphs (a)(38), (a)(40), (a)(90) and (h)(27) are revised to read as follows:

§ 648.14 Prohibitions.

(a) * * *

(38) Enter or be in the area described in § 648.81(a)(1) on a fishing vessel, except as provided by § 648.58, during the time and in the portion of Closed Area I specified in § 648.58, or § 648.81(a)(2) and (d).

* * * * *

(40) Enter or be in the area described in § 648.81(c)(1) on a fishing vessel, except as provided by § 648.58, during the time and in the portion of the Nantucket Lightship Closed Area specified in § 648.58, or § 648.81(c)(2) and (d).

* * * * *

(90) Use, set, haul back, fish with, possess on board a vessel, unless stowed in accordance with § 648.23(b), or fail to remove, sink gillnet gear and other gillnet gear capable of catching multispecies, with the exception of single pelagic gillnets (as described in § 648.81(g)(2)(ii)), in the areas and for the times specified in § 648.87(a) and (b), except as provided in §§ 648.81(g)(2)(ii) and 648.87(a) and (b), or unless otherwise authorized in writing by the Regional Administrator.

* * * * *

(h) * * *

(27) Enter or be in the areas described in § 648.58(b)(1), (b)(2), or (b)(3) when fishing under the Sea Scallop Exemption Program specified in § 648.58, with a net, net material, or any other material on the top half of the dredge with mesh size smaller than that specified in § 648.58(c)(7).

* * * * *

3. In § 648.17, paragraph (c) is revised to read as follows:

§ 648.17 Exemptions for vessels fishing in the NAFO Regulatory Area for Multispecies vessels.

* * * * *

(c) When transiting the EEZ, all gear is properly stowed in accordance with one of the applicable methods specified in § 648.23(b); and

* * * * *

4. In § 648.23, paragraph (b) introductory text, and paragraphs (b) (1) through (b) (4) are revised to read as follows:

§ 648.23 Gear restrictions.

* * * * *

(b) Definition of ''not available for immediate use.'' Gear that is shown not to have been in recent use and that is stowed in conformance with one of the following methods is considered to be not available for immediate use:

(1) *Nets.* (i) *Below deck stowage.* (A) It is stored below the main working deck from which it is deployed and retrieved;

(B) The towing wires, including the leg wires, are detached from the net; and

(C) It is fan-folded (flaked) and bound around its circumference.

(ii) *On-deck stowage.* (A) It is fan-folded (flaked) and bound around its circumference;

(B) It is securely fastened to the deck or rail of the vessel; and

(C) The towing wires, including the leg wires, are detached from the net.

(iii) *On-reel stowage.* (A) It is on a reel, its entire surface is covered with canvas or other similar material, and the canvas or other material is securely bound;

(B) The towing wires are detached from the net; and

(C) The codend is removed and stored below deck.

(iv) *On-reel stowage for vessels transiting the Gulf of Maine Rolling Closure Areas, the Georges Bank Seasonal Area Closure, and the Conditional Gulf of Maine Rolling Closure Area.* (A) The net is on a reel, its entire surface is covered with canvas or other similar material, and the canvas or other material is securely bound;

(B) The towing wires are detached from the doors; and

(C) No containment rope, codend tripping device, or other mechanism to close off the codend is attached to the codend.

(2) *Scallop dredges.* The towing wire is detached from the scallop dredge, the towing wire is completely reeled up onto the winch, the dredge is secured and the dredge or the winch is covered so that it is rendered unusable for fishing.

(3) *Hook gear (other than pelagic).* All anchors and buoys are secured and all hook gear, including jigging machines, is covered.

(4) *Sink gillnet gear.* All nets are covered with canvas or other similar material and lashed or otherwise securely fastened to the deck or rail, and all buoys larger than 6 inches (15.24 cm) in diameter, high flyers, and anchors are disconnected.

* * * * *

5. In § 648.51, paragraphs (b)(2)(i) and (b)(2)(ii) are revised to read as follows:

§ 648.51 Gear and crew restrictions.

* * * * *

(b) * * *

(2) * * * (i) For vessels not fishing under the scallop DAS program, the mesh size of a net, net material, or any other material on the top of a scallop dredge in use by or in possession of such vessels shall not be smaller than 5.5 inches (13.97 cm) square or diamond mesh.

(ii) Unless otherwise restricted under § 648.58, the mesh size of a net, net material, or any other material on the top of a scallop dredge possessed or used by vessels fishing under a scallop DAS shall not be smaller than 8–inch (20.32–cm) square or diamond mesh.

* * * * *

6. In § 648.52, paragraph (c) is revised to read as follows:

§ 648.52 Possession limits.

* * * * *

(c) Owners or operators of vessels with a limited access scallop permit that have declared into the Sea Scallop Exemption Program as described in § 648.58 are prohibited from possessing or landing per trip more than the sea scallop possession limit specified in § 648.58(c)(6).

7. In § 648.53, paragraph (d) is revised to read as follows:

§ 648.53 DAS allocations.

* * * * *

(d) *End-of-year carry-over.* With the exception of vessels that held a Confirmation of Permit History as described in § 648.4(a)(1)(i)(J) for the entire fishing year preceding the carry-over year, limited access vessels that have unused DAS on the last day of February of any year may carry over a maximum of 10 DAS into the next year. DAS sanctioned vessels will be credited with unused DAS based on their DAS allocation minus total DAS sanctioned.

* * * * *

8. In § 648.57, introductory paragraphs (a) and (b) are revised to read as follows:

§ 648.57 Closed areas.

(a) *Hudson Canyon South Closed Area.* Through March 1, 2001, no vessel may fish for, possess, or retain sea scallops from the area known as the Hudson Canyon South Closed Area or possess sea scallops in this closed area or transit this closed area unless all scallop dredge gear on board is properly stowed and not available for immediate use in accordance with the provisions of § 648.23(b). Vessels fishing in this closed area for species other than scallops must stow scallop dredge gear in accordance with the provisions of § 648.23(b). The Hudson Canyon South Closed Area (copies of a chart depicting this area are available from the Regional Administrator upon request) is defined by straight lines connecting the following points in the order stated:

* * *

(b) *Virginia Beach Closed Area.* Through March 1, 2001, no vessel may

fish for, possess, or retain sea scallops from the area known as the Virginia Beach Closed Area or possess sea scallops in this closed area or transit this closed area unless all scallop dredge gear on board is properly stowed and not available for immediate use in accordance with the provisions of § 648.23(b). Vessels fishing in this closed area for species other than scallops must stow scallop dredge gear in accordance with the provisions of § 648.23(b). The Virginia Beach Closed Area (copies of a chart depicting this area are available from the Regional Administrator upon request) is defined by straight lines connecting the following points in the order stated:

* * *

* * * * *

9. Effective June 14, 2000, § 648.58(c)(3)(i) and (ii) are revised to read as follows:

§ 648.58 Sea Scallop Exemption Program.

* * * * *

(c) * * *

(3) *Declaration.* (i) The vessel must submit a report through the VMS e-mail messaging system at least 15 days prior to the opening of each Sea Scallop Exemption Area season, as specified in paragraphs (b)(1) through (b)(3) of this section, of its intention to fish in the respective Exemption Areas, along with the following information: Vessel name and permit number, owner and operator's name, owner and operator's phone numbers, and number of trips anticipated for the Sea Scallop Exemption Area in question.

(ii) In addition to the requirements described in paragraph (c)(3)(i) of this section, and for the purpose of selecting vessels for observer deployment, a vessel must provide notice to NMFS, as to the time and port of departure at least 5 working days prior to the beginning of any trip on which it declares into the Sea Scallop Exemption Program.

* * * * *

10. Effective June 15, 2000, § 648.58 is revised to read as follows:

§ 648.58 Sea Scallop Exemption Program.

(a) *Eligibility.* All scallop vessels issued a limited access scallop permit may fish in the Sea Scallop Exemption Areas, as described in paragraphs (b)(1) through (b)(3) of this section, for the times specified in paragraphs (b)(1) through (b)(3) of this section, when fishing under a scallop DAS, provided the vessel complies with the requirements of this section. Copies of a chart depicting these areas are available from the Regional Administrator upon request.

(b) *Sea Scallop Exemption Areas*—(1) *Closed Area II Sea Scallop Exemption Area.* During June 15, 2000, through August 14, 2000, eligible vessels may fish in the Closed Area II Sea Scallop Exemption Area, which is the area defined by straight lines connecting the following points in the order stated:

CLOSED AREA II SEA SCALLOP EXEMPTION AREA

Point	N. Lat.	W. Long.
CII1	41°00'	67°20'
CII2	41°00'	66°35.8'
G5	41°18.6'	66°24.8'(on U.S./Canada Maritime Boundary)
SC1	41°30'	66°34.8'(on U.S./Canada Maritime Boundary)
SC2	41°30'	67°20'
CII1	41°00'	67°20'

(2) *The Nantucket Lightship Sea Scallop Exemption Area.* During August 15, 2000, through September 30, 2000, eligible vessels may fish in the Nantucket Lightship Sea Scallop Exemption Area, which is the area defined by straight lines connecting the following points in the order stated:

NANTUCKET LIGHTSHIP SEA SCALLOP EXEMPTION AREA

Point	N. Lat.	W. Long.
G10	40°50'	69°00'
SC7	40°30'	69°00'
SC8	40°30'	69°14.5'
SC9	40°50'	69°29'
G10	40°50'	69°00'

(3) *The Closed Area I Sea Scallop Exemption Area.* During October 1, 2000, through December 31, 2000, eligible vessels may fish in the Closed Area I Sea Scallop Exemption Area, which is the area defined by straight lines connecting the following points in the order stated:

CLOSED AREA I SEA SCALLOP EXEMPTION AREA

Point	N. Lat.	W. Long.
SC3	41°04.5'	69°1.2'
SC4	41°09'	68°30'
CI4	41°30'	68°30'
SC5	41°30'	68°35'
SC6	41°08'	69°4.2'
SC3	41°04.5'	69°1.2'

(c) *Requirements.* To fish in the Sea Scallop Exemption Areas under the Sea Scallop Exemption Program an eligible vessel must comply with the following requirements:

(1) *Season.* The vessel may only fish in the Sea Scallop Exemption Areas under the Sea Scallop Exemption Program during the respective times and areas specified in paragraphs (b)(1) through (b)(3) of this section, unless otherwise specified by notification in the **Federal Register**.

(2) *VMS.* The vessel must have installed on board an operational VMS unit that meets the minimum performance criteria specified in § 648.9(b) or as modified in § 648.9(a).

(3) *Declaration.* (i) The vessel must submit a report through the VMS e-mail messaging system at least 15 days prior to the opening of each Sea Scallop Exemption Area season, as specified in paragraphs (b)(1) through (b)(3) of this section, of its intention to fish in the respective Exemption Areas, along with the following information: Vessel name and permit number, owner and operator's name, owner and operator's phone numbers, and number of trips anticipated for the Sea Scallop Exemption Area in question.

(ii) In addition to the requirements described in paragraph (c)(3)(i) of this section, and for the purpose of selecting vessels for observer deployment, a vessel must provide notice to NMFS, as to the time and port of departure at least 5 working days prior to the beginning of any trip on which it declares into the Sea Scallop Exemption Program.

(iii) On the day the vessel leaves port to fish under the Sea Scallop Exemption Program, the vessel owner or operator must declare into the Program through the VMS, in accordance with instructions to be provided by the Regional Administrator prior to leaving port.

(4) *Number of trips.* (i) *Full and part time vessels.* Unless otherwise specified by notification in the **Federal Register**, full and part time vessels will be restricted to the following number of trips depending on the Exemption Area fished:

(A) When fishing in the Closed Area II Sea Scallop Exemption Area, as defined in paragraph (b)(1) of this section, vessels are restricted to no more than three trips.

(B) When fishing in the Nantucket Lightship Sea Scallop Exemption Area, as defined in paragraph (b)(2) of this section, vessels are restricted to no more than one trip.

(C) When fishing in the Closed Area I Sea Scallop Exemption Area, as defined in paragraph (b)(3) of this section, vessels are restricted to no more than two trips.

(ii) *Occasional scallop vessels.* Occasional vessels may only fish one trip under the Sea Scallop Exemption Program. This trip may be conducted in any one of the Sea Scallop Exemption Areas during the respective seasons, as described in paragraphs (b)(1) through (b)(3) of this section.

(5) *Area fished.* A vessel that has declared a trip into the Sea Scallop Exemption Program must not fish for, catch, or harvest scallops from outside of the specific Sea Scallop Exemption Area fished during that trip and must not enter or exit the specific Exemption Area fished more than once per trip.

(6) *Possession limits.* (i) Unless otherwise authorized by the Regional Administrator as specified in paragraph (e) of this section, a vessel declared into the Sea Scallop Exemption Program may possess and land up to 10,000 lb (4,536.0 kg) of scallop meats per trip, with a maximum of 400 lb (181.4 kg) of the possession limit originating from 50 bu (176.1 L) of in-shell scallops.

(ii) The vessel may possess and land up to 1,000 lb (453.6 kg) of regulated multispecies, unless otherwise restricted under § 648.86(a)(2)(i) or (b), or the vessel is carrying a NMFS approved sea sampler or observer on board the vessel. A vessel carrying an approved sea sampler or observer may possess all regulated multispecies caught, provided the regulated multispecies in excess of 1,000 lb (453.6 kg) are donated to a bonafide charity. A vessel subject to the 1,000-lb (453.6-kg) possession limit must separate all regulated multispecies onboard from other species of fish so as to be readily available for inspection.

(7) *Gear restrictions.* The vessel must fish with or possess scallop dredge gear only in accordance with the dredge vessel restrictions specified under § 648.51(b), except that the mesh size of a net, net material, or any other material on the top of a scallop dredge in use by or in possession of the vessel shall not be smaller than 10.0 inches (25.40 cm) square or diamond mesh.

(8) *Transiting.* When transiting to and from the Sea Scallop Exemption Areas, all gear on board must be properly stowed and not available for immediate use in accordance with the provisions of § 648.23(b).

(9) *Off-loading restrictions.* The vessel may not off-load its sea scallop catch at more than one location.

(10) *Reporting.* The owner or operator must submit reports through the VMS, in accordance with instructions to be provided by the Regional Administrator, for each day fished when declared in the Sea Scallop Exemption Program. The reports must be submitted in 24–hour intervals no later than 0900 hours of the preceding day, beginning at 0000 hours and ending at 2400 hours each day, and include the following information:

(i) Total pounds/kilograms of scallop meats kept; the Fishing Vessel Trip Report log page number; and

(ii) For each trip that the vessel has a NMFS approved observer on board, the total pounds/kilograms of scallop meats kept, Fishing Vessel Trip Report log page number and total pounds/kilograms of yellowtail flounder caught on tows that were observed by a NMFS approved observer.

(d) *Accrual of DAS.* A scallop vessel that has declared a fishing trip into the Sea Scallop Exemption Program of this section shall have a minimum of 10 DAS deducted from its DAS allocation, regardless of whether the actual number of DAS used during the trip is less than 10. Trips that exceed 10 DAS will be counted as actual time.

(e) *Adjustments to possession limits and number of trips*—(1) *Adjustment process for sea scallop possession limit and number of trips for Closed Area I and the Nantucket Lightship Closed Area.* If the scallop and yellowtail flounder catch in the Nantucket Lightship and/or the Closed Area I Sea Scallop Exemption Areas is less than the scallop TAC and yellowtail flounder TAC specified under paragraphs (f)(1) and (f)(2) of this section, the Regional Administrator may adjust the sea scallop possession limit, and/or allocate one or more additional trips for full and part-time limited access sea scallop vessels for the Nantucket Lightship and/or the Closed Area I Sea Scallop Exemption Areas during the month of January 2001. This adjustment may be made if the Regional Administrator determines that such adjustment will likely allow the scallop TAC to be reached without exceeding it. Notification of this adjustment to the possession limit and/or trip limit will be provided to the vessel through a permit holder letter issued by the Regional Administrator. Occasional permitted vessels would not be allocated an additional trip.

(2) *Increase of possession limit to defray costs of observers*—(i) *Defraying the costs of observers.* The Regional Administrator may increase the sea scallop possession limit specified under paragraph (c)(6) of this section for a vessel, subject to the limit on the cumulative amount of sea scallops allocated to defray costs of observers by areas as specified in paragraph (e)(2)(ii)(A) of this section, that has

declared a fishing trip into the Sea Scallop Exemption Program if a NMFS approved observer is on board the vessel. Notification of this increase of the possession limit will be provided to the vessel through a Letter of Authorization issued by the Regional Administrator. The amount of the possession limit increase will be determined by the Regional Administrator and the vessel owner will be responsible for paying the cost of the observer, regardless of whether the vessel lands or sells sea scallops on that trip.

(ii) *Observer set-aside limits on increases of possession limits by area.* (A) The cumulative amount of scallops authorized under this part to be taken by vessels in excess of the possession limits specified under paragraph (c)(6) of this section to defray the cost of an observer shall not exceed the following for each sea scallop exemption area:

(*1*) Closed area II—60 mt

(*2*) Nantucket Lightship—50 mt

(*3*) Closed area I—64 mt.

(B) [Reserved]

(iii) *Notification of observer set aside limit.* NMFS shall publish notification in the **Federal Register** of the date that the Regional Administrator projects that the observer set aside limit will be caught.

(3) *Adjustments to possession limits and/or number of trips to defray the costs of sea scallop research*—(i) *Defraying the costs of sea scallop research.* The Regional Administrator may increase the sea scallop possession limit specified in paragraph (c)(6) of this section or allow additional trips into a Sea Scallop Exemption Area, subject to the limits on the cumulative amount of sea scallops and yellowtail flounder allocated to defray costs for sea scallop research as specified in paragraph (e)(3)(ii) of this section.

(ii) *Sea scallop research set-aside limits on adjustments to possession limits and number of trips by area.* (A) Sea scallop set aside for sea scallop research. The cumulative amount of scallops authorized under this part to be taken by vessels in excess of the possession limits specified under (c)(6) for purposes of defraying the cost of sea scallop research shall not exceed the following for each sea scallop exemption area:

(*1*) Closed area II—30 mt

(*2*) Nantucket Lightship—25 mt

(*3*) Closed area I—32 mt.

(B) Yellowtail flounder research set aside. The cumulative amount of yellowtail flounder catch authorized under this part to be taken by vessels in excess of the possession limits specified in (c)(6) for purposes of defraying the cost of sea scallop research shall not exceed the following for each sea scallop exemption area:

(*1*) Closed areas I and II—7.25 mt

(*2*) Nantucket Lightship—0.5 mt.

(C) NMFS shall publish notification in the **Federal Register** of the date that the Regional Administrator projects that these set aside limits will be caught.

(iii) *Adjustment procedure.* (A) Determinations as to which vessel may be authorized to take more than the trip limits specified at (e)(3)(i) of this section or to take additional trips for the purposes of defraying sea scallop research costs shall be made by NMFS, in cooperation with the Council. At a minimum applicants shall submit a scallop proposal under this program and a project summary that includes: the project goals and objectives, relationship of sea scallop research to management needs or priorities identified by the Council, project design, participants other than applicant, funding needs, breakdown of costs, and vessel(s) identified to be authorized as specified under paragraph (e)(3)(iii)(B) of this section.

(B) NOAA will make the final determination as to what proposals are approved and which vessels are authorized to take scallops in excess of possession limits or additional trips. Authorization to increase possession limits and/or number of trips will be provided to the vessel by Letter of Authorization issued by the Regional Administrator.

(iv) *Project Report Procedure.* Upon completion of its sea scallop research, the researcher of approved projects must provide the Council with a report of its findings, which includes:

(A) A detailed description of methods of data collection and analyses;

(B) A discussion of results and any relevant conclusions presented in a format that is understandable to a non-technical audience; and

(C) A detailed final accounting of all funds used to conduct the sea scallop research.

(f) *Termination of the Sea Scallop Exemption Area Fisheries*—(1) *Termination of sea scallop exemption area fisheries when the scallop TAC is exceeded*—(i) *Closed Area II Sea Scallop Exemption Area.* NMFS shall terminate the Closed Area II Sea Scallop Exemption Area fishery as of the date the Regional Administrator projects that 2,934 mt of Closed Area II sea scallops will be caught by vessels fishing in the Sea Scallop Exemption Program described in this section. NMFS shall publish notification of the termination in the **Federal Register**.

(ii) *Nantucket Lightship Sea Scallop Exemption Area.* NMFS shall terminate the Nantucket Lightship Sea Scallop Exemption Area fishery as of the date the Regional Administrator projects that 2,445 mt of Nantucket Lightship sea scallops will be caught by vessels fishing in the Sea Scallop Exemption Program described in this section. NMFS shall publish notification of the termination in the **Federal Register**.

(iii) *Closed Area I Sea Scallop Exemption Area.* NMFS shall terminate the Closed Area I Sea Scallop Exemption Area fishery as of the date the Regional Administrator projects that 3,111 mt of Closed Area I sea scallops will be caught by vessels fishing in the Sea Scallop Exemption Program described in this section. NMFS shall publish notification of the termination in the **Federal Register**.

(2) *Termination of sea scallop exemption area fisheries when the yellowtail flounder TAC is exceeded*—(i) *Closed Area II and Closed Area I Sea Scallop Exemption Areas.* NMFS shall terminate the Closed Area II and Closed Area I Sea Scallop Exemption Area fisheries as of the date the Regional Administrator projects that the 717.75 mt of Georges Bank yellowtail flounder will be caught by vessels fishing in the Sea Scallop Exemption Program described in this section. NMFS shall publish notification of the termination in the **Federal Register**.

(ii) *Nantucket Lightship Sea Scallop Exemption Area.* NMFS shall terminate the Nantucket Lightship Sea Scallop Exemption Area fishery as of the date the Regional Administrator projects that the 49.5 mt of Southern New England yellowtail flounder will be caught by vessels fishing in the Sea Scallop Exemption Program described in this section. NMFS shall publish notification of the termination in the **Federal Register**.

(g) *Transiting.* (1) *Closed Area II.* Limited access sea scallop vessels may not enter, fish, or be in the area known as the Closed Area II Sea Scallop Exemption Area described in paragraph (b)(1) of this section unless the operator has determined that there is a compelling safety reason and the vessel's fishing gear is stowed in accordance with the requirements of § 648.23(b).

(2) *The Nantucket Lightship Closed Area and Closed Area I.* Limited access sea scallop vessels fishing under a scallop DAS that have not declared a trip into the Sea Scallop Exemption Program may not enter, fish, or be in the areas known as the Nantucket Lightship and Closed Area I Sea Scallop Exemption Areas described in

paragraphs (b)(2) and (b)(3), respectively, of this section, unless the vessel's fishing gear is stowed in accordance with the requirements of § 648.23(b).

(h) *VMS Polling.* For the duration of the Sea Scallop Exemption Program, as described under this section, all sea scallop limited access vessels equipped with a VMS unit will be polled twice per hour, regardless of whether the vessel is enrolled in the Sea Scallop Exemption Program.

11. In § 648.80, paragraphs (a)(2)(iii), (b)(2)(iii), (b)(6)(i)(C) and (b)(9)(i)(E) are revised to read as follows:

§ 648.80 Multispecies Regulated mesh areas and restrictions on gear and methods of fishing.

* * * * *

(a) * * *

(2) * * *

(iii) *Other restrictions and exemptions.* Vessels are prohibited from fishing in the GOM/GB Regulated Mesh Area except if fishing with exempted gear (as defined under this part) or under the exemptions specified in paragraphs (a)(3), (a)(4), (a)(6), (a)(8) through (a)(13), (d), (e), (h), and (i) of this section, if fishing under a NE multispecies DAS, if fishing under the small vessel exemption specified in § 648.82((b)(3), if fishing under the scallop state waters exemptions specified in § 648.54 and (a)(10) of this section, if fishing under a scallop DAS in accordance with paragraph (h), or if fishing pursuant to a NE multispecies open access Charter/Party or Handgear permit. Any gear on a vessel, or used by a vessel, in this area must be authorized under one of these exemptions or must be stowed as specified in § 648.23(b).

* * * * *

(b) * * *

(2) * * *

(iii) *Other restrictions and exemptions.* Vessels are prohibited from fishing in the SNE Regulated Mesh Area except if fishing with exempted gear (as defined under this part) or under the exemptions specified in paragraphs (b)(3), (b)(5) through (9), (c), (e), (h), and (i) of this section, if fishing under a NE multispecies DAS, if fishing under the small vessel exemption specified in § 648.82(b)(3), if fishing under a scallop state waters exemption specified in § 648.54, if fishing under a scallop DAS in accordance with paragraph (h), or if fishing pursuant to a NE multispecies open access Charter/Party or Handgear permit. Any gear on a vessel, or used by a vessel, in this area must be authorized under one of these exemptions or must be stowed as specified in § 648.23(b).

* * * * *

(6) * * *

(i) * * *

(C) All nets with a mesh size smaller than the minimum mesh size specified in paragraph (b)(6)(i)(B) of this section must be stowed as specified in § 648.23(b).

* * * * *

(9) * * *

(i) * * *

(E) All nets with a mesh size smaller than the minimum mesh size specified in paragraph (b)(9)(i)(D) of this section must be stowed in accordance with one of the methods described under § 648.23(b) while fishing under this exemption.

* * * * *

12. In § 648.81, the section heading, introductory paragraphs (a)(1), (b)(1), and (c)(1) and paragraph (d) are revised and paragraph (e) is removed and reserved as follows:

§ 648.81 Closed areas.

(a) *Closed Area I.* (1) No fishing vessel or person on a fishing vessel may enter, fish, or be in the area known as Closed Area I (copies of a chart depicting this area are available from the Regional Administrator upon request), as defined by straight lines connecting the following points in the order stated, except as specified in paragraphs (a)(2) and (d) of this section, or unless exempt under the Sea Scallop Exemption Program specified under § 648.58 during the time and in the portion of Closed Area I described in § 648.58(b)(3):

* * * * *

(b) *Closed Area II.* (1) No fishing vessel or person on a fishing vessel may enter, fish, or be in the area known as Closed Area II (copies of a chart depicting this area are available from the Regional Administrator upon request), as defined by straight lines connecting the following points in the order stated, except as specified in paragraph (b)(2) of this section, or unless exempt under the Sea Scallop Exemption Program specified under § 648.58 during the time and in the portion of Closed Area II described in § 648.58(b)(1):

* * * * *

(c) *Nantucket Lightship Closed Area.* (1) No fishing vessel or person on a fishing vessel may enter, fish, or be in the area known as the Nantucket Lightship Closed Area (copies of a chart depicting this area are available from the Regional Administrator upon request), as defined by straight lines connecting the following points in the order stated, except as specified in paragraphs (c)(2) and (d) of this section, or unless exempt under the Sea Scallop Exemption Program specified under § 648.58 during the time and in the portion of the Nantucket Lightship Closed Area described in § 648.58(b)(2):

* * * * *

(d) *Transiting.* A vessel may transit Closed Area I, the Nantucket Lightship Closed Area, the GOM Rolling Closure Areas, the Cashes Ledge Closure Area, the Western GOM Closure Area, the Georges Bank Seasonal Area Closure and the Conditional Cashes Ledge and Gulf of Maine Rolling Closure Areas (if applicable), as defined in paragraphs (a)(1), (c)(1), (f)(1), (g)(1), (h)(1), (i)(1), (n)(1) and (o)(1), respectively, of this section, provided that its gear is stowed in accordance with the provisions of § 648.23(b).

* * * * *

13. In § 648.82, paragraph (k)(1)(iv)(A) is revised to read as follows:

§ 648.82 Effort-control program for multispecies limited access vessels.

* * * * *

(k) * * *

(1) * * *

(iv) * * *

(A) During each fishing year, vessels must declare, and take, a total of 120 days out of the non-exempt gillnet fishery. Each period of time declared and taken must be a minimum of 7 consecutive days. At least 21 days of this time must be taken between June 1 and September 30 of each fishing year. The spawning season time out period required by § 648.82(g) will be credited toward the 120 days time out of the non-exempt gillnet fishery. If a vessel owner has not declared and taken, any or all of the remaining periods of time required by the last possible date to meet these requirements, the vessel is prohibited from fishing for, possessing, or landing regulated multispecies or non-exempt species harvested with gillnet gear, and from having gillnet gear on board the vessel that is not stowed in accordance with § 648.23(b), while fishing under a multispecies DAS, from that date through the end of the period between June 1 and September 30, or through the end of the fishing year, as applicable.

* * * * *

14. In § 648.86, paragraphs (a)(2)(iii), (b)(3), (b)(4), (d)(1)(i), (d)(1)(ii) and (d)(1)(iii) are revised to read as follows:

§ 648.86 Multispecies possession restrictions.

* * * * *

(a) * * *

(2) * * *

(iii) Except for vessels fishing under the Sea Scallop Exemption Program,

from July 1 through December 31, 2000, as provided in § 648.58(c)(6)(ii), or unless otherwise authorized by the Regional Administrator as specified in paragraph (f) of this section, scallop dredge vessels or persons owning or operating a scallop dredge vessel that is fishing under a scallop DAS allocated under § 648.53 may land or possess on board up to 300 lb (136.1 kg) of haddock, provided that the vessel has at least one standard tote on board. This restriction does not apply to vessels issued NE multispecies Combination Vessel permits that are fishing under a multispecies DAS. Haddock on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection.

* * * * *

(b) * * *

(3) *Transiting.* A vessel that has exceeded the cod landing limit as specified in paragraph (b)(1) of this section, and is, therefore, subject to the requirement to remain in port for the period of time described in paragraph (b)(1)(ii)(A) of this section may transit to another port during this time, provided that the vessel operator notifies the Regional Administrator (see Table 1 to § 600.502 of this chapter) either at the time the vessel reports its hailed weight of cod or at a later time prior to transiting and provides the following information: vessel name and permit number, destination port, time of departure, and estimated time of arrival. A vessel transiting under this provision must stow its gear in accordance with one of the methods specified in § 648.23(b) and may not have any fish on board the vessel.

(4) *Exemption.* A vessel fishing under a NE multispecies DAS is exempt from the landing limit described in paragraph (b)(1) of this section when fishing south of a line beginning at the Cape Cod, MA coastline at 42°00' N. lat. and running eastward along 42°00' N. lat. until it intersects with 69°30' W. long., then northward along 69°30' W. long. until it intersects with 42°20' N. lat., then eastward along 42°20' N. lat. until it intersects with 67°20' W. long., then northward along 67°20' W. long. until it intersects with the U.S.-Canada maritime boundary, provided that it does not fish north of this exemption area for a minimum of 30 consecutive days (when fishing under the multispecies DAS program), and has on board an authorization letter issued by the Regional Administrator. Vessels exempt from the landing limit requirement may transit the GOM/GB Regulated Mesh Area north of this exemption area, provided that their gear is stowed in accordance with one of the provisions of § 648.23(b).

* * * * *

(d) * * *

(1) * * *

(i) *Vessels using mesh size smaller than 2.5 in (6.35 cm) and vessels without a letter of authorization.* Owners or operators of vessels fishing for, in possession of, or landing small-mesh multispecies with, or having on board except as provided herein, nets of mesh size smaller than 2.5 in (6.35 cm) (as applied to the part of the net specified at (d)(1)(iv) of this section), and, vessels that have not been issued a letter of authorization pursuant to paragraph (d)(1)(ii) or (d)(1)(iii) of this section may possess on board and land up to only 3,500 lb (1,588 kg) of combined silver hake and offshore hake. This possession limit on small-mesh multispecies does not apply if all nets with mesh size smaller than 2.5 in (6.35 cm) have not been used to catch fish for the entire fishing trip and the nets have been properly stowed pursuant to § 648.23(b), and the vessel is fishing with a mesh size and a letter of authorization as specified in paragraphs (d)(1)(ii), (d)(1)(iii) and (d)(2) of this section. Silver hake and offshore hake on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection. The vessel is subject to applicable restrictions on gear, area, and time of fishing specified in § 648.80 and any other applicable provision of this part.

(ii) *Vessels authorized to use nets of mesh size 2.5 in (6.35 cm) or greater.* Except as provided in paragraph (d)(3) of this section, owners and operators of vessels issued a valid letter of authorization pursuant to paragraph (d)(2) of this section authorizing the use of nets of mesh size 2.5 in (6.35 cm) or greater, may fish for, possess, and land small-mesh multispecies up to only 7,500 lb (3,402 kg) combined silver hake and offshore hake when fishing with nets of a minimum mesh size of 2.5 in (6.35 cm) (as applied to the part of the net specified in (d)(1)(iv) of this section), provided that any nets of mesh size smaller than 2.5 in (6.35 cm) have not been used to catch such fish and are properly stowed pursuant to § 648.23(b) for the entire trip. Silver hake and offshore hake on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection. The vessel is subject to applicable restrictions on gear, area, and time of fishing specified in § 648.80 and any other applicable provision of this part.

(iii) *Vessels authorized to use nets of mesh size 3 in (7.62 cm) or greater.* Except as provided in paragraph (d)(3) of this section, owners and operators of vessels issued a valid letter of authorization pursuant to paragraph (d)(2) of this section authorizing the use of nets of mesh size 3 in (7.62 cm) or greater, may fish for, possess, and land small-mesh multispecies up to only 30,000 lb (13,608 kg) combined silver hake and offshore hake when fishing with nets of a minimum mesh size of 3 in (7.62 cm) (as applied to the part of the net specified in (d)(1)(iv) of this section), provided that any nets of mesh size smaller than 3 in (7.62 cm) have not been used to catch such fish and are properly stowed pursuant to § 648.23(b) for the entire trip. Silver hake and offshore hake on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection. The vessel is subject to applicable restrictions on gear, area, and time of fishing specified in § 648.80 and any other applicable provision of this part.

* * * * *

15. In § 648.87, introductory text to paragraphs (a) and (b) are revised to read as follows:

§ 648.87 Gillnet requirements to reduce or prevent marine mammal takes.

(a) *Areas closed to gillnet gear capable of catching multispecies to reduce harbor porpoise takes.* All persons owning or operating vessels in the EEZ portion of the areas and times specified in paragraphs (a)(1), through (a)(4) of this section must remove all of their sink gillnet gear and other gillnet gear capable of catching multispecies, with the exception of single pelagic gillnets (as described in § 648.81(g)(2)(ii)), and may not use, set, haul back, fish with, or possess on board, unless stowed in accordance with the requirements of § 648.23(b), sink gillnet gear or other gillnet gear capable of catching multispecies, with the exception of single pelagic gillnet gear (as described in § 648.81(g)(2)(ii)) in the EEZ portion of the areas and for the times specified in paragraphs (a)(1) through (a)(4) of this section. Also, all persons owning or operating vessels issued a limited access multispecies permit must remove all of their sink gillnet gear and other gillnet gear capable of catching multispecies, with the exception of single pelagic gillnets (as described in § 648.81(g)(2)(ii)), from the areas and for the times specified in paragraphs (a)(1) through (a)(4) of this

section, and may not use, set, haul back, fish with, or possess on board, unless stowed in accordance with the requirements of § 648.23(b), sink gillnets or other gillnet gear capable of catching multispecies, with the exception of single pelagic gillnets (as described in § 648.81(g)(2)(ii)) in the areas and for the times specified in paragraphs (a)(1) through (a)(4) of this section.

* * * * *

(b) *Areas closed to gillnet gear capable of catching multispecies to prevent right whale takes.* All persons owning or operating vessels must remove all of their sink gillnet gear and gillnet gear capable of catching multispecies, with the exception of single pelagic gillnets (as described in § 648.81(g)(2)(ii)), from the EEZ portion of the areas and for the times specified in paragraphs (b)(1) and (2) of this section, and may not use, set, haul back, fish with, or possess on board, unless stowed in accordance with the requirements of § 648.23(b), sink gillnet gear or gillnet gear capable of catching multispecies, with the exception of single pelagic gillnet gear (as described in § 648.81(g)(2)(ii)) in the EEZ portion of the areas and for the times specified in paragraphs (b)(1) and (2) of this section. Also, all persons owning or operating vessels issued a limited access multispecies permit must remove all of their sink gillnet gear and other gillnet gear capable of catching multispecies, with the exception of single pelagic gillnets (as described in § 648.81(g)(2)(ii)), from the areas and for the times specified in paragraphs (b)(1) and (2) of this section, and, may not use, set, haul back, fish with, or possess on board, unless stowed in accordance with the requirements of § 648.23(b), sink gillnet gear or other gillnet gear capable of catching multispecies, with the exception of single pelagic gillnets (as described in § 648.81(g)(2)(ii)) in the areas and for the times specified in paragraphs (b)(1) and (2) of this section.

* * * * *

16. In § 648.88, paragraph (c) is revised to read as follows:

§ 648.88 Multispecies open access permit restrictions.

* * * * *

(c) *Scallop multispecies possession limit permit.* Except as provided in § 648.58(c)(6)(ii) for vessels fishing under the Sea Scallop Exemption Program, a vessel that has been issued a valid open access scallop multispecies possession limit permit may possess and land up to 300 lb (136.1 kg) of regulated species when fishing under a scallop DAS allocated under § 648.53, provided the vessel does not fish for, possess, or land haddock from January 1 through June 30 as specified under § 648.86(a)(2)(i), and provided the vessel has at least one standard tote on board.

* * * * *

17. In § 648.89, paragraph (a) is revised to read as follows:

§ 648.89 Recreational and charter/party restrictions.

(a) *Recreational gear restrictions.* Persons aboard charter or party vessels permitted under this part and not fishing under the DAS program, and recreational fishing vessels in the EEZ, are prohibited from fishing with more than two hooks per line and one line per angler and must stow all other fishing gear on board the vessel as specified under § 648.23(b).

* * * * *

18. In § 648.91, paragraph (c)(2)(ii) is revised to read as follows:

§ 648.91 Monkfish regulated mesh areas and restrictions on gear and methods of fishing.

* * * * *

(c) * * *

(2) * * *

(ii) All other non-conforming gear must be stowed as specified in § 648.23(b).

* * * * *

19. In § 648.94, paragraph (e) is revised to read as follows:

§ 648.94 Monkfish possession and landing restrictions.

* * * * *

(e) *Transiting.* A vessel that has declared into the NFMA for the purpose of fishing for monkfish, or a vessel that is subject to less restrictive measures in the NFMA, may transit the SFMA, provided that the vessel does not harvest or possess monkfish from the SFMA and that the vessel's fishing gear is properly stowed and not available for immediate use in accordance with § 648.23(b).

* * * * *

[FR Doc. 00–15360 Filed 6–14–00; 2:17 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 991221344–9344–01; I.D. 121099A]

RIN 0648–AN44

Fisheries Off West Coast States and in the Western Pacific; Western Pacific Pelagic Fisheries; Hawaii-based Pelagic Longline Area Closure

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

ACTION: Emergency rule; extension of expiration date.

SUMMARY: This action extends an emergency rule, now in effect, that closes certain waters to fishing by vessels engaged in the Hawaii-based pelagic longline fishery. The rule was published in the **Federal Register** on December 27, 1999, in response to the Order Setting Terms of Injunction issued on November 23, 1999, by the U.S. District Court, District of Hawaii, (Court). The area closure is intended to reduce adverse impacts to sea turtles by restricting the activities of the Hawaiian longline fishery while an environmental impact statement (EIS) is being prepared for the Fishery Management Plan for Pelagic Fisheries of the Western Pacific Region (FMP). Extension of the emergency rule will maintain the temporary area closure until December 23, 2000, or until new time and area closures, as imposed by the Court, are implemented by NMFS.

DATES: This emergency rule is effective 12:02 a.m., local time, June 26, 2000, through 12:01 a.m., local time, December 23, 2000.

ADDRESSES: Copies of the environmental assessment prepared for the emergency rule may be obtained from Dr. Charles Karnella, Administrator, Pacific Islands Area Office (PIAO), NMFS, 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI, 96814–4700.

FOR FURTHER INFORMATION CONTACT: Alvin Katekaru or Marilyn Luipold, PIAO, 808–973–2937.

SUPPLEMENTARY INFORMATION: NMFS is extending an emergency rule promulgated on December 23, 1999 (64 FR 72290, December 27, 1999), which otherwise would expire on June 26, 2000. Extension of this rule is authorized under section 305(c)(3)(B) of the Magnuson-Stevens Fishery Conservation and Management Act.

This rule temporarily amends implementing regulations of the FMP by prohibiting vessels registered for use with Hawaii longline limited access permits from fishing with longline gear within the area north of 28° N. lat. and between 168° W. long. and 150° W. long. It also prohibits vessels registered for use with receiving vessel permits from receiving from another vessel pelagic management unit species harvested with longline gear, if these species were harvested or their transfer to another vessel occurs within the closed area. No vessel may land or transship, shoreward of the outer boundary of the U.S. exclusive economic zone around Hawaii, pelagic management unit species that were harvested with longline gear within the closed area.

The area closure is mandated by the Court's Order Setting Terms of Injunction dated November 23, 1999. The intent of the area closure is to reduce adverse impacts on sea turtles, pending the completion of an EIS on the pelagic fisheries managed under the FMP. Background information on the area closure and emergency rule appears in the emergency rule published in the **Federal Register** on December 27, 1999 (64 FR 72290), and is not repeated here.

This emergency closure was implemented to comply with Judge Ezra's Court Order, and affords protection to leatherback and other sea turtles incidentally taken by the Hawaii-based pelagic longline fleet while further analysis of methods to mitigate these interactions is being conducted. There are a total of 164 permits issued for this limited entry fishery, with active fishing by 114 vessels during 1999. All permit holders may be affected by the extension of this closure. There are no reporting, recordkeeping, or compliance requirements associated with this closure, or its extension. The extension of this closure does not duplicate, overlap, or conflict with any Federal rules. The alternative of not extending this closure was rejected on the basis that it would not meet the Court Order or its conservation objectives.

This extension of the emergency rule will maintain the current area closure for an additional 180 days unless, prior to that expiration date, NMFS implements a set of new time and area closures imposed by the Court. If the Court chooses to continue the current closure, NMFS could implement an amendment to the FMP and make this closure effective until the EIS is completed, or until further notice.

Classification

The Assistant Administrator for Fisheries, NOAA, has determined that extension of the emergency rule is necessary to comply with a valid order of the U.S. District Court.

This emergency rule has been determined to be not significant for purposes of Executive Order 12866.

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

Dated: June 14, 2000.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC

1. The authority citation for part 660 continues to read as follows:

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

2. In § 660.22, new paragraphs (z) through (bb) are added to read as follows:

660.22 Prohibitions.

* * * * *

(z) Fish with a vessel registered for use under a Hawaii longline limited access permit using longline gear within the area north of 28° N. lat. and between 168° W. long. and 150° W. long.

(aa) Land or transship shoreward of the outer boundary of the EEZ around Hawaii Pacific pelagic management unit species that were harvested with longline gear within the area north of 28° N. lat. and between 168° W. long. and 150° W. long.

(bb) Use a receiving vessel registered for use under a receiving vessel permit described in § 660.21(c) to receive from another vessel Pacific pelagic management unit species harvested with longline gear, if the fish were harvested or the transfer occurs within the area north of 28° N. lat. and between 168° W. long. and 150° W. long.

* * * * *

[FR Doc. 00–15411 Filed 6–16–00; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 65, No. 118
Monday, June 19, 2000

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

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

RIN 0563–AB79

Common Crop Insurance Regulations; Millet Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule with requests for comments.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to add to its regulations a new section that provides for the insurance of millet. The provisions will be used in conjunction with the Common Crop Insurance Policy Basic Provisions, which contain standard terms and conditions common to most crops. The intended effect of this action is to convert the millet pilot crop insurance program to a permanent insurance program administered by FCIC for the 2002 and succeeding crop years.

DATES: Written comments and opinions on this proposed rule will be accepted until close of business August 18, 2000 and will be considered when the rule is to be made final. The comment period for information collections under the Paperwork Reduction of 1995 continues through August 18, 2000.

ADDRESSES: Interested persons are invited to submit written comments to the Director, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131. Comments titled ''Millet Crop Insurance Provisions'' may be sent via the Internet to (PDD.Director @RM.FCIC.USDA.GOV). A copy of each response will be available for public inspection and copying from 7 a.m. to 4:30 p.m., CDT, Monday through Friday, except holidays, at the above address.

FOR FURTHER INFORMATION CONTACT: Gary Johnson, Insurance Management Specialist, Research and Development, Product Development Division, Federal Crop Insurance Corporation, at the Kansas City, MO, address listed above, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be not-significant for the purpose of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Paperwork Reduction Act of 1995

In accordance with section 3507(j) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501), the information collection or recordkeeping requirements included in the proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please submit your written comments to the Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue S.W., Washington D.C. 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

We are soliciting comments from the public concerning our proposed information collection and recordkeeping. We need this output to help us:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission responses.)

The collections of information for this rule revise the Multiple Peril Crop Insurance Collections of Information 0563–0053, which expires on April 30, 2001.

Title: Multiple Peril Crop Insurance (Millet).

Abstract: This provision will replace and supersede the current millet pilot crop insurance program with a permanent millet crop insurance program that is codified in the Code of Federal Regulations. The proposed rule adds prevented planting coverage. The proposed rule will allow for expansion of the program to more producers of millet.

Purpose: The purpose of this proposed rule is to replace and supersede the current millet pilot crop insurance program with a permanent millet crop insurance program that is codified in the Code of Federal Regulations.

Burden statement: The information that FCIC collects on the specified forms will be used in offering crop insurance coverage, determining program eligibility, establishing a production guarantee, calculating losses qualifying for payment, etc.

Estimate of Burden: We estimate that it will take insured producers, a loss adjuster, and an insurance agent an average of .8 of an hour to provide the information required by the Millet Crop Insurance Provisions.

Respondents: Insureds, insurance agents, and loss adjusters.

Estimated annual number of respondents: 1,136

Estimated annual number of responses per respondent: 2.4

Estimated total annual burden on respondents: 879

Recordingkeeping requirements: FCIC requires records to be kept for three years, and all records required by FCIC are retained as part of the normal business practice. Therefore, FCIC is not estimating additional burden related to recordkeeping.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. 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.

Executive Order 13132

It has been determined under section 1(a) of Executive Order 13132, Federalism, that this rule does not have sufficient implications to warrant the consultation with the states. The provisions contained in this rule will not have a substantial direct effect on States, or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

This regulation will not have a significant economic impact on a substantial number of small entities. The availability of insurance for the current population of millet entities is limited to the two pilot states that have the majority of the millet production. New provisions included in this rule will not impact small entities to a greater extent than large entities. The amount of work required of insurance companies should not increase because the information used to determine eligibility is already maintained at their office. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605), and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with state and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order 12988

This proposed rule has been reviewed in accordance with Executive Order 12988 civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

FCIC offered a pilot crop insurance program for the millet in 1996. The pilot program was successfully completed and had a loss ratio of 0.62. The pilot millet program insured more than 2,000 producers and approximately 250,000 acres for the 1996 through 2001 crop years.

FCIC has decided to make the millet crop insurance program a permanent crop insurance program. To effectuate this, FCIC proposes to add to the Common Crop Insurance regulations (7 CFR part 457) a new section 7 CFR 457.165, Millet Crop Insurance Provisions. The millet crop insurance provisions are similar to other actual production history based crop insurance programs, including small grains. However, the millet crop insurance programs offers a different percent reduction for late planted acreage to more accurately reflect the increased risk. Further, although not available under the millet pilot program, the proposed rule will include prevented planting coverage.

The proposed provisions will be effective for the 2002 and succeeding crop years. These provisions will replace and supersede the current unpublished provisions that insure millet under pilot program status.

List of Subjects in 7 CFR Part 457

Crop insurance, Millet, Reporting and recordkeeping requirements.

Proposed Rule

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation proposes to amend 7 CFR part 457 as follows:

PART 457—COMMON CROP INSURANCE REGULATIONS

1. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(p).

2. Section 457.165 is added to read as follows:

§ 457.165 Millet crop insurance provisions.

The Millet Crop Insurance Provisions for the 2001 and succeeding crop years are as follows:

FCIC policies:

UNITED STATES DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Reinsured policies:

(Appropriate title for insurance provider)

Both FCIC and reinsured policies:

Millet crop insurance provisions

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

1. Definitions

Bushel. Fifty pounds of millet, or any other quantity which is designated in the Special Provisions for that purpose.

Harvest. Combining or threshing the millet for grain. A crop that is swathed prior to combining is not considered harvested.

Late planting period. In lieu of the definition of ''late planting period'' contained in section 1 of the Basic Provisions, late planting period is defined as the period that begins the day after the final planting date for the insured crop and ends 20 days after the final planting date.

Local market price. The cash price for millet with a 50-pound test weight adjusted to zero percent foreign material content basis offered by buyers in the area in which you normally market the millet. Factors not associated with grading, including but not limited to moisture content, will not be considered.

Millet. Proso millet produced for grain to be used primarily as bird and livestock feed.

Nurse crop (companion crop). A crop planted into the same acreage as another crop, that is intended to be harvested separately, and that is planted to improve growing conditions for the crop with which it is grown.

Planted acreage. In addition to the definition of ''Planted acreage'' contained in section 1 of the Basic Provisions, planted acreage is also defined as land on which seed is initially spread onto the soil surface by any method and is subsequently mechanically incorporated into the soil in a timely manner and at the proper depth. Acreage planted in any manner not contained in the definition of ''planted acreage'' will not be insurable unless otherwise provided by the Special Provisions or actuarial documents.

Swathed. Severance of the stem and grain head from the ground without removal of the seed from the head and placing into a windrow.

Windrow. Millet that is cut and placed in a row.

2. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities

In addition to the requirements of section 3 of the Basic Provisions, you may select only one price election for all the millet in the county insured under this policy.

3. Contract Changes

In accordance with section 4 of the Basic Provisions, the contract change date is November 30 preceding the cancellation date.

4. Cancellation and Termination Dates

In accordance with section 2 of the Basic Provisions, the cancellation and termination dates are March 15.

5. Insured Crop

In accordance with section 8 of the Basic Provisions, the crop insured will be all the

millet in the county for which a premium rate is provided by the actuarial documents:

(a) In which you have a share;

(b) That is planted for harvest as grain; and

(c) That is not (unless allowed by Special Provisions or by written agreement):

(1) Interplanted with another crop;

(2) Planted into an established grass or legume; or

(3) Planted as a nurse crop, unless the millet is harvested as grain.

6. Insurable Acreage

In addition to the provisions of section 9 of the Basic Provisions, any acreage of the insured crop damaged before the final planting date, to the extent that a majority of producers in the area would not normally further care for the crop, must be replanted unless we agree that it is not practical to replant.

7. Insurance Period

In accordance with the provisions of section 11 of the Basic Provisions, the calendar date for the end of the insurance period is the date immediately following planting as follows:

(a) North Dakota and South Dakota:

(1) September 15 for acreage not swathed and windrowed; or

(2) October 10 for acreage swathed and windrowed by September 15;

(b) All other states:

(1) September 30 for acreage not swathed and windrowed by September 30; or (2) October 15 for acreage swathed and windrowed by September 30.

8. Causes of Loss

In accordance with the provisions of section 12 of the Basic Provisions, insurance is provided only against the following causes of loss that occur within the insurance period:

(a) Adverse weather conditions;

(b) Fire;

(c) Insects, but not damage due to insufficient or improper application of pest control measures;

(d) Plant disease, but not damage due to insufficient or improper application of disease control measures;

(e) Wildlife;

(f) Earthquake;

(g) Volcanic eruption; or

(h) Failure of the irrigation water supply, if caused by an insured cause of loss that occurs during the insurance period.

9. Duties In the Event of Damage or Loss

In accordance with the requirements of section 14 of the Basic Provisions, the representative samples of the unharvested crop must be at least 10 feet wide and extend the entire length of each field in the unit. The samples must not be harvested or destroyed until the earlier of our inspection or 15 days after harvest of the balance of the unit is completed.

10. Settlement of Claim

(a) We will determine your loss on a unit basis. In the event you are unable to provide records of production:

(1) For any optional unit, we will combine all optional units for which acceptable records of production were not provided; or

(2) For any basic unit, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for each unit.

(b) In the event of loss or damage covered by this policy, we will settle your claim on any unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting result the total production to count (See section 10(c)) from the result of section 10(b)(1);

(3) Multiplying the result of section 10(b)(2) by your price election; and

(4) Multiplying the result of section 10(b)(3) by your share and any adjustment from section 10(f).

For example:

You have a 100 percent share in 100 acres of millet in the unit, with a guarantee of 15 bushels per acre and a price election of $4.00 per bushel. You are only able to harvest 800 bushels. Your indemnity would be calculated as follows:

(1) 100 acres × 15 bushel=1,500 bushel guarantee;

(2) 1,500 bushel guarantee − 800 bushel production to count=700 bushel loss;

(3) 700 bushel × $4.00 price election=$2,800 loss; and;

(4) $2,800 × 100 percent share=$2,800 indemnity payment.

(c) The total production (bushels) to count from all insurable acreage on the unit will include:

(1) All appraised production as follows:

(i) Your appraised production will not be less than the production guarantee for acreage:

(A) That is abandoned;

(B) Put to another use without our consent;

(C) Damaged solely by uninsured causes; or

(D) For which you fail to provide records of production that are acceptable to us;

(ii) Production lost due to uninsured causes;

(iii) Unharvested production (mature unharvested production may be adjusted for quality deficiencies and excess moisture in accordance with section 10(d));

(iv) Potential production on insured acreage you want to put to another use or you wish to abandon, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end if you put the acreage to another use or abandon the crop. If agreement on the appraised amount of production is not reached:

(A) If you do not elect to continue to care for the crop, we may give you consent to put the acreage to another use if you agree to leave intact, and provide sufficient care for, representative samples of the crop in locations acceptable to us. (The amount of production to count for such acreage will be based on the harvested production or appraisals from the samples at the time harvest should have occurred. If you do not leave the required samples intact, or you fail to provide sufficient care for the samples, our appraisal made prior to giving you consent to put the acreage to another use will be used to determine the amount of production to count); or

(B) If you elect to continue to care for the crop, the amount of production to count for the acreage will be the harvested production, or our reappraisal if additional damage occurs and the crop is not harvested; and

(2) All harvested production from the insurable acreage.

(d) Mature millet may be adjusted for excess moisture and quality deficiencies. If moisture adjustment is applicable, it will be made prior to any adjustment for quality.

(1) Production will be reduced by .12 percent for each 0.1 percent point of moisture in excess of .12 percent. We may obtain samples of the production to determine the moisture content.

(2) Production will be eligible for quality adjustment if:

(i) Deficiencies in quality result in the millet weighing less than 50 pounds per bushel; or

(ii) Substances or conditions are present that are identified by the Food and Drug Administration or other public health organizations of the United States as being injurious to human or animal health.

(3) Quality will be a factor in determining your loss only if:

(i) The deficiencies, substances, or conditions resulted from a cause of loss against which insurance is provided under these crop provisions and within the insurance period;

(ii) The deficiencies, substances, or conditions result in a net price for the damaged production that is less than the local market price;

(iii) All determinations of these deficiencies, substances, or conditions are made using samples of the production obtained by us or by a disinterested third party approved by us; and

(iv) The samples are analyzed by a grader or by a laboratory approved by us with regard to substances or conditions injurious to human or animal health (test weight for quality adjustment purposes may be determined by our loss adjuster).

(4) Millet production that is eligible for quality adjustment, as specified in sections 10(d)(2) and (3), will be reduced by the quality adjustment factor contained in the Special Provisions if quality adjustment factors are not available in the county, the eligible millet production will be reduced as follows:

(i) The market price of the qualifying damaged production and the local market price will be determined on the earlier of the date such quality adjusted production is sold or the date of final inspection for the unit.

(ii) The price for the qualifying damaged production will be the market price for the local area to the extent feasible. Discounts used to establish the net price of the damaged production will be limited to those that are usual, customary, and reasonable. The price will not be reduced for:

(A) Moisture content;

(B) Damage due to uninsured causes; or

(C) Drying, handling, processing, or any other costs associated with normal harvesting, handling, and marketing of the millet; except, if the value of the damaged

production can be increased by conditioning, we may reduce the value of the production after it has been conditioned by the cost of conditioning but not lower than the value of the production before conditioning. We may obtain prices from any buyer of our choice. If we obtain prices from one or more buyers located outside your local market area, we will reduce such prices by the additional costs required to deliver the millet to those buyers.

(iii) The value of the damaged or conditioned production determined in section 10(d)(4)ii) will be divided by the local market price to determine the quality adjustment factor;

(iv) The number of bushels remaining after any reduction due to excessive moisture (the moisture-adjusted gross bushel, if appropriate) of the damaged or conditioned production under section 10(d)(i) will then be multiplied by the quality adjustment factor from section 10(d)(4)(iii) to determine the production to count.

(e) Any production harvested from plants growing in the insured crop may be counted as production of the insured crop on a weight basis.

(f) If the insured crop is not swathed, the amount of indemnity payable under section 10(b) will be reduced by 30 percent to reflect those costs not incurred by you. If the insured crop is swathed by not harvested, the amount of indemnity payable under section 10(b) will be reduced by 15 percent to reflect those costs incurred by you.

11. Late Planting

In lieu of the provisions contained in section 16(a) of the Basic Provisions, the production guarantee for each acre planted to the insured crop during the late planting period, unless otherwise specified in the Special Provisions, will be reduced by:

(a) One percent for the first through the tenth day; and

(b) Three percent for the eleventh through the twentieth day.

12. Prevented Planting

Your prevented planting coverage will be 60 percent of your production guarantee for timely planted acreage. If you have limited or additional levels of coverage, as specified in 7 CFR part 400, subpart T, and pay an additional premium, you may increase your prevented planting coverage to a level specified in the actuarial documents.

Signed in Washington, D.C., on June 5, 2000.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 00–15322 Filed 6–16–00; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–376–AD]

RIN 2120–AA64

Airworthiness Directives; Raytheon Model DH.125, Model HS.125, Model BH.125, Model BAe125 Series 800A (Including Major Variants C–29A and U1–25), Model Hawker 800, Model Hawker 800XP, and Model Hawker 1000 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Raytheon Model DH.125, Model HS.125, Model BH.125, Model BAe.125 Series 800A, Model Hawker 800, Model Hawker 800XP, and Model Hawker 1000 series airplanes. This proposal would require leak checks and inspections for corrosion of the pitot/static and stall vent drain valves, and replacement of certain components, if necessary. This proposal is prompted by reports of plugged or taped drain valves as well as consequent corrosion of certain drain valves. The actions specified by the proposed AD are intended to prevent erroneous altimeter and airspeed indications due to plugged or taped pitot/static and stall vent drain valves.

DATES: Comments must be received by August 3, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–376–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Raytheon Aircraft Company, Manager Service Engineering, Hawker Customer Support Department, P. O. Box 85, Wichita, Kansas 67201–0085. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas.

FOR FURTHER INFORMATION CONTACT: Paul DeVore, Aerospace Engineer, Systems and Propulsion Branch, ACE–116W, FAA, Small Airplane Directorate, Wichita, Kansas 672029; telephone (316) 946–4142; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 99–NM–376–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–376–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports of plugged or taped pitot/static and stall vent drain valves. The reports indicate that corrosion also was detected in some valves. This condition, if not corrected, could result in erroneous altimeter and airspeed indications.

Explanation of Relevant Service Information

The FAA has reviewed and approved Raytheon Aircraft Service Bulletin SB 34–3207, dated August 1999, which describes procedures for performing repetitive leak checks of the pitot/static

and stall vent drain valves and inspections for corrosion of the drain valve system, and corrective actions, such as replacement of certain components of the drain valve system. That service bulletin also references the following two service bulletins as additional sources of service information.

Raytheon Aircraft Service Bulletin SB 34–3223, dated August 1999, describes the application of a temporary seal for the pitot/static and stall vent drain valves.

Raytheon Aircraft Service Bulletin SB 34–3282, dated August 1999, describes the installation of a new insert for the pitot/static and stall vent drain valves that will provide a positive seal of the valves. If accomplished on all drain valves, the modification would eliminate the need for the repetitive leak checks described in SB 34–3207.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require leak checks of the pitot/static and stall vent drain valve systems and corrective actions, if necessary. The proposed AD would provide an optional action to apply a temporary seal of the drain valve for certain drain valves that are operative but that are leaking. The actions would be required to be accomplished in accordance with the service bulletins described previously. The proposed AD also would provide an optional terminating action for the proposed repetitive inspections that involves installing a new insert for the drain valve system.

Cost Impact

There are approximately 900 airplanes of the affected design in the worldwide fleet. The FAA estimates that 585 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $140,400, or $240 per airplane.

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

Should an operator accomplish the optional modification to the drain valve system, it would take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the optional modification is estimated to be $60 per airplane.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Raytheon Aircraft Co. (Formerly Beech): Docket 99–NM–376–AD.

Applicability: Model DH.125, Model HS.125, Model BH.125, Model BAe.125, Model Hawker 800, Model Hawker 800XP, and Model Hawker 1000 series airplanes; as listed in Raytheon Aircraft Service Bulletin SB 34–3207, dated August 1999; excluding those airplanes on which all pitot/static drain vent valves have been modified with an insert in accordance with Raytheon Aircraft Repair Design Office instructions; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been otherwise 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 as indicated, unless accomplished previously.

To prevent erroneous altimeter and airspeed indications due to plugged or taped pitot/static and stall vent drain valves, accomplish the following:

Leak Tests

(a) Within 300 hours time-in-service after the effective date of this AD: Drain the pitot/static and stall vent drain valves, and perform a leak test of the systems, in accordance with Raytheon Aircraft Service Bulletin SB 34–3207, dated August 1999. If all drain valves are operating correctly and the leak test is passed successfully, thereafter, repeat the leak test at intervals not to exceed 300 hours time-in-service.

Drain Valves Operative

(b) If all drain valves are operative, but any valve does not pass the leak test required by paragraph (a) of this AD: Prior to further flight, accomplish the actions specified in paragraph (b)(1), (b)(2), or (b)(3) of this AD.

(1) Apply a temporary seal of the drain valve(s) in accordance with Raytheon Aircraft Service Bulletin SB 34–3223, dated August 1999. Within 300 hours time-in-service after the accomplishment of the temporary seal, accomplish the requirements of paragraphs (b)(2) or (b)(3) of this AD.

(2) Replace the drain valve components with new or serviceable drain valve components in accordance with Raytheon Aircraft Service Bulletin SB 34–3207, dated August 1999, and perform the leak test specified in paragraph (a) of this AD. Thereafter, repeat the requirements of paragraph (a) of this AD at intervals not to exceed 300 hours time-in-service.

(3) Modify the drain valves in accordance with Raytheon Aircraft Service Bulletin SB 34–3282, dated August 1999. Thereafter, repeat the requirements of paragraph (a) of this AD at intervals not to exceed 300 hours time-in-service unless all the drain valves have been modified. Accomplishment of the modification on ALL drain valves consititutes terminating action for the requirement to perform repetitive leak tests.

Drain Valves Inoperative

(c) If any drain valve is inoperative (*e.g.*, plugged or taped), whether or not any leaking is detected: Prior to further flight, disassemble the valve and clean all

obstructions in accordance with Raytheon Aircraft Service Bulletin SB 34–3207, dated August 1999, and perform a general visual inspection for corrosion of the drain valve.

Note 2: For the purposes of this AD, a general visual inspection is defined as: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

(d) If no corrosion of the drain valves is detected, prior to further flight, perform the actions specified in either paragraph (d)(1) or (d)(2) of this AD at the time specified.

(1) Perform the leak test specified in paragraph (a) of this AD, and thereafter, repeat the leak test requirements at intervals not to exceed 300 hours time-in-service.

(2) Prior to further flight, modify any inoperative valve in accordance with Raytheon Aircraft Service Bulletin SB 34–3282, dated August 1999. Thereafter, repeat the leak test requirements of paragraph (a) of this AD at intervals not to exceed 300 hours time-in-service. Modification of ALL the drain valves constitutes terminating action for the requirement to perform repetitive leak tests.

(e) If any drain valve is corroded, prior to further flight: Inspect the connecting tubing for corrosion and replace any corroded valve or tubing with a new or serviceable valve or tubing in accordance with Raytheon Aircraft Service Bulletin SB 34–3207, dated August 1999. Accomplish the actions of paragraph (e)(1) or (e)(2) of the AD at the time specified.

(1) Prior to further flight, perform the leak test specified in paragraph (a) of this AD, and thereafter, repeat the leak test requirements of paragraph (a) of this AD at intervals not to exceed 300 hours time-in-service.

(2) Prior to further flight, modify any replaced drain valve in accordance with Raytheon Aircraft Service Bulletin SB 34–3282, dated August 1999. Thereafter, repeat the leak test requirements of paragraph (a) of this AD at intervals not to exceed 300 hours time-in-service. Modification of ALL the drain valves constitutes terminating action for the requirement to perform repetitive leak tests.

Alternative Methods of Compliance

(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, Wichita Aircraft Certification Office (ACO), ACE–116W, FAA Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

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

Special Flight Permit

(g) 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 airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on June 13, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–15420 Filed 6–16–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–SW–68–AD]

Airworthiness Directives; Eurocopter Canada Ltd. Model BO 105 LS A–3 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 Eurocopter Canada Ltd. Model BO 105 LS A–3 helicopters. That AD currently requires, before further flight, creating a component log card or equivalent record, and determining the calendar age and number of flights on each tension-torsion (TT) strap, and inspecting and removing, as necessary, certain unairworthy TT straps. This action would establish a life limit for certain main rotor TT straps. This proposal is prompted by an accident in which a main rotor blade (blade) separated from a Eurocopter Deutschland GMBH (ECD) Model MBB–BK 117 helicopter due to fatigue failure of a TT strap. The same part-numbered TT strap is used on the Model BO 105 LS A–3 helicopters. The actions specified by this AD are intended to prevent fatigue failure of a TT strap, loss of a blade, and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before August 18, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 99–SW–68–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: 9-asw-adcomments@faa.gov. Comments may be inspected at the Office of the Regional Counsel between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Charles Harrison, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0110, telephone (817) 222–5128, fax (817) 222–5961

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 mailed 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–68–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–68–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

On October 4, 1999, the FAA issued AD 99–20–13, Amendment 39–11371 (64 FR 56156, October 18, 1999), applicable to Eurocopter Canada Ltd. Model BO 105 LS A–3 helicopters. That AD requires, before further flight, creating a component log card or

equivalent record and determining the calendar age and number of flights on each TT strap. AD 99–20–13 also requires inspecting and removing, as necessary, certain unairworthy TT straps. That action was prompted by an accident in which a blade separated from an ECD Model MBB–BK 117 helicopter due to fatigue failure of a TT strap. The same part-numbered TT strap is also used on the Eurocopter Canada Ltd. Model BO 105 LS A–3 helicopters. The requirements of that AD are intended to prevent failure of a TT strap, loss of a blade, and subsequent loss of control of the helicopter.

Since the issuance of that AD, we have determined the need to establish a life limit for the TT strap. We have also determined that the graduated inspection criteria and TT strap lives specified in the current AD are no longer necessary after a life limit is established.

Eurocopter Canada issued Alert Service Bulletin BO 105 LS A–3 No. ASB–BO 105 LS–10–10, dated September 1, 1999 (ASB). The ASB describes procedures for determining the total accumulated installation time and number of flights on each TT strap. The ASB also specifies inspecting and replacing, as necessary, certain unairworthy TT straps. Transport Canada Civil Aviation, the airworthiness authority for Canada, classified this ASB as mandatory and issued AD CF–99–24R1, dated September 22, 1999, applicable to the Eurocopter Canada Model BO 105 LS A–3 helicopters to ensure the continued airworthiness of these helicopters in Canada.

Since an unsafe condition has been identified on the ECD Model MBB–BK–117 that is likely to exist or develop on Eurocopter Canada Ltd., Model BO 105 LS A–3 helicopters registered in the United States, the proposed AD would require establishing a life limit for the TT straps of 120 months or 25,000 flights, whichever occurs first.

The FAA estimates that 20 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 16 work hours per helicopter to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $10,400 per helicopter. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $227,200.

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal does not have federalism implications under Executive Order 13132.

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 39–11371 (64 FR 56156, October 18, 1999), and by adding a new airworthiness directive (AD), to read as follows:

Eurocopter Canada Ltd.: Docket No. 99–SW–68–AD. Supersedes AD 99–20–13, Amendment 39–11371, Docket No. 99–SW–56–AD.

Applicability: Model BO 105 LS A–3 helicopters, with part number (P/N) 2604067 (Bendix) or J17322–1 (Lord) rotor tension torsion (TT) strap, 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 (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue failure of a TT strap, loss of a main rotor blade (blade), and subsequent loss of control of the helicopter, accomplish the following:

(a) Before further flight,

(1) Create a component log card or equivalent record for each TT strap.

(2) Review the history of each helicopter and TT strap. Determine the age since initial installation on any helicopter (age) and the number of flights on each TT strap. Enter both the age and the number of flights for each TT strap on the component log card or equivalent record. When the number of flights is unknown, multiply the number of hours time-in-service (TIS) by 5 to determine the number of flights. If a TT strap has been previously used at any time on Model BO–105LS A–3 ''SUPER LIFTER'', BO–105 CB–5, BO–105 CBS–5, BO–105 DBS–5, or any MBB–BK 117 series helicopter, multiply the total number of flights accumulated on those other models by a factor of 1.6 and then add that result to the number of flights accumulated on the helicopters affected by this AD.

(3) Remove any TT strap from service if the total hours TIS or number of flights and age cannot be determined.

(b) Remove any TT strap, P/N 2604067 or J17322–1, that has been in service 120 months since initial installation on any helicopter or accumulated 40,000 flights (a flight is a takeoff and a landing). Replace the TT strap with an airworthy TT strap.

(c) This AD revises the Airworthiness Limitations Section of the maintenance manual by establishing a life limit for the TT strap, P/N 2604067 and J17322–1, of 120 months or 40,000 flights, whichever occurs first.

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

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

(e) 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.

Note 3: The subject of this AD is addressed in Transport Canada Civil Aviation, Canada, AD CF–99–24R1, dated September 22, 1999.

Issued in Fort Worth, Texas, on June 9, 2000.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 00–15425 Filed 6–16–00; 8:45 am]

BILLING CODE 4910–13–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ092–002; FRL–6718–9]

Approval and Promulgation of Implementation Plans; Arizona—Maricopa County PM–10 Nonattainment Area; Serious Area Plan for Attainment of the Annual PM–10 Standard; Reopening of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; reopening of comment period.

SUMMARY: EPA is reopening the comment period for its proposed action to approve provisions of the Revised MAG 1999 Serious Area Particulate Plan for PM–10 for the Maricopa County (Phoenix) Nonattainment Area, February 2000, and the control measures on which it relies, that address the annual PM–10 national ambient air quality standard. As part of this proposal, we also proposed to grant Arizona's request to extend the Clean Air Act deadline for attaining the annual PM–10 standard in the Phoenix area from 2001 to 2006 and to approve two particulate matter rules adopted by the Maricopa County Environmental Services Department and Maricopa County's Residential Woodburning Restrictions Ordinance.

DATES: Any comments on this proposal must arrive by July 3, 2000.

ADDRESSES: Mail comments to Frances Wicher, Air Planning Office (AIR–2), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

FOR FURTHER INFORMATION CONTACT: Frances Wicher, Air Planning Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 744–1248.

SUPPLEMENTARY INFORMATION: On April 13, 2000, we proposed to approve the serious area air quality plan for attainment of the annual PM–10 standard in the Phoenix, Arizona, metropolitan area. The proposed actions are based on our initial determination that this plan complies with the Clean Air Act's requirements for attainment of the annual PM–10 standard in serious PM–10 nonattainment areas.

Specifically, we proposed to approve the following elements of the plan as they apply to the annual PM–10 standard:

- The base year emissions inventory of PM–10 sources,
- The demonstration that the plan provides for implementation of reasonably available control measures (RACM) and best available control measures (BACM),
- The demonstration that attainment of the PM–10 annual standard by the Clean Air Act deadline of December 31, 2001 is impracticable,
- The demonstration that attainment of the PM–10 annual standard will occur by the most expeditious alternative date practicable, in this case, December 31, 2006,
- The demonstration that the plan provides for reasonable further progress and quantitative milestones,
- The demonstration that the plan includes to our satisfaction the most stringent measures found in the implementation plan of another state or are achieved in practice in another state, and can feasibly be implemented in the area,
- The demonstration that major sources of PM–10 precursors such as nitrogen oxides and sulfur dioxide do not contribute significantly to violations of the annual PM–10 standard, and
- The transportation conformity budget.

We also proposed to grant Arizona's request to extend the attainment date for the annual PM–10 standard from December 31, 2001 to December 31, 2006.

Finally, we are proposing to approve Maricopa County's fugitive dust rules, Rules 310 and 301.01, and its residential woodburning restriction ordinance.

The proposal action provided a 60 day public comment period that ended on June 12, 2000. In response to a request from City of Tempe, Arizona, we are reopening the comment period for an additional 14 days.

Dated: June 10, 2000.

Felicia Marcus,

Regional Administrator, Region IX.

[FR Doc. 00–15394 Filed 6–16–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[CA–019–FOI, FRL–6719–2]

Clean Air Act Reclassification and Finding of Failure to Implement a State Implementation Plan; California, San Joaquin Valley Nonattainment Area; Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to find that the San Joaquin Valley serious ozone nonattainment area did not attain the 1-hour ozone national ambient air quality standard by November 15, 1999, the Clean Air Act's (CAA) attainment deadline for serious ozone nonattainment areas. If EPA makes final this proposed finding, the San Joaquin Valley nonattainment area will be reclassified by operation of law to severe.

EPA also proposes to find that the approved serious area ozone State Implementation Plan for the San Joaquin Valley nonattainment area has not been fully implemented. If EPA makes final this proposed nonimplementation finding, the San Joaquin Valley Unified Air Pollution Control District will have to correct the specified deficiencies within 18 months of the final finding or be subject to sanctions pursuant to section 179(b) of the CAA.

DATES: Comments on these proposed actions must be received by July 19, 2000.

ADDRESSES: Comments may be mailed to: John Ungvarsky, Planning Office (AIR–2), Air Division, EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105; ungvarsky.john@epa.gov.

Copies of the proposed rule, the technical support document for this rulemaking, and EPA policies governing nonattainment and nonimplementation findings are contained in the docket for this rulemaking. The docket is available for inspection during normal business hours at the address listed above. A copy of this proposed rule and the TSD are also available in the air programs section of EPA Region 9's website, *http://www.epa.gov/region09.*

FOR FURTHER INFORMATION CONTACT: John Ungvarsky, Planning Office (AIR–2), Air Division, EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105, (415) 744–1286.

SUPPLEMENTARY INFORMATION:

I. The Proposed Finding of Failure To Attain

A. The San Joaquin Valley's Current Status for the 1-Hour Ozone Standard

The San Joaquin Valley ozone nonattainment area includes the southern portion of California's central valley and the eastern part of Kern County that is located in the Southeast Desert Air Basin. The local air pollution control agency for the Valley portion of the nonattainment area is the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) and for eastern Kern, the Kern County Air Pollution Control District (KCAPCD). The area is currently classified as serious for the 1-hour ozone national ambient air quality standard (NAAQS). 40 CFR § 81.305.

When the Clean Air Act (CAA) Amendments were enacted in 1990, each area of the Country that was designated nonattainment for the 1-hour ozone standard, including the San Joaquin Valley, was classified by operation of law as ''marginal,'' ''moderate,'' ''serious,'' ''severe,'' or ''extreme'' depending on the severity of the area's air quality problem. CAA sections 107(d)(1)(C) and 181(a). Based on its air quality during the 1987–1989 period, the San Joaquin Valley nonattainment area was initially classified as serious with an attainment date of no later than November 15, 1999. See 56 FR 56694 (November 6, 1991) and CAA section 181(a)(1).

B. Clean Air Act Requirements for Attainment Findings

Under CAA section 181(b)(2)(A), we must determine within six months of the applicable attainment date whether an ozone nonattainment area has attained the 1-hour ozone standard. If we find that a serious area has not attained the standard and does not qualify for an extension, it is reclassified by operation of law to severe.[1] CAA section 181(b)(2)(A) requires us to base our determination of attainment or failure to attain on the area's design value as of its applicable attainment date, which for the San Joaquin Valley nonattainment area is November 15, 1999.

The 1-hour ozone NAAQS is 0.12 ppm not to be exceeded on average more than one day per year over any three year period. 40 CFR § 50.9 and Appendix H. Under our policies, we determine if an area has attained the one-hour standard by calculating, at each monitor, the average number of days over the standard per year during the preceding three year period.[2] 40 CFR part 50, Appendix H. This means that if an area has four or more exceedances at a single monitor during a 3-year period, the average number of exceedance days per year exceeds one and the area has not attained the standard. For this proposal, we have based our determination of whether the San Joaquin Valley nonattainment area attained the 1-hour ozone standard by November 15, 1999 on both the area's design value and the average number of exceedance days per year during the 1997 to 1999 period.

The effect of a reclassification to severe on the San Joaquin Valley nonattainment area is to set a new attainment deadline for the area of November 15, 2005 and to require the State to submit a new attainment plan that meets the CAA's requirements for severe ozone nonattainment areas. CAA sections 181(a) and 182(i). Under section 182(i), we may set the submittal deadlines for these new planning requirements.

C. The San Joaquin Valley Nonattainment Area Failed to Attain by its CAA Deadline

Table 1 lists each monitoring site in the San Joaquin Valley nonattainment area that experienced 4 or more days over the standard in the period 1997 to 1999. For each of these monitors, the table lists the number of days over the standard, average number of days per year over the standard, and the design value during the 1997 to 1999 period. For each of these sites, the average number of exceedance days per year over the 3-year period 1997–1999 exceeds one. The area's design value, which is the highest design value among the area's monitors, is 0.161 at the Clovis monitor. Because the average number of exceedance days per year for 1997–99 exceeds one and the area's design value is above the 1-hour ozone standard of 0.12 ppm, we are proposing the find that the San Joaquin Valley serious ozone nonattainment area failed to attain by its applicable CAA deadline of November 15, 1999.

TABLE 1.—OZONE AIR QUALITY IN THE SAN JOAQUIN VALLEY NONATTAINMENT AREA (1997–1999)

Monitoring site	Number of days over the standard 1997–1999	Average number of exceedance days per year	Site design value (ppm)
Fresno—4706 E. Drummond	12	4.0	0.137
Fresno—3425 N. First	20	6.7	0.146
Fresno—Sierra Skypark#2	15	5.0	0.141
Parlier	36	12.0	0.145
Clovis	40	13.3	0.161
Edison	27	8.3	0.154
Maricopa (97–98 only)	8	4	0.137
Arvin	28	6.3	0.137
Hanford	7	2.3	0.128
Turlock	4	1.3	0.127
Visalia	8	2.7	0.127
Merced	5	1.7	0.132

[1] If a state does not have the clean data necessary to show attainment of the 1-hour standard but does have clean air in the year immediately preceding the attainment date and has fully implemented its applicable SIP, it may apply to us, under CAA section 181(a)(5), for a one-year extension of the attainment date. We do not discuss this provision further in today's proposal because California did not apply for an extension of the attainment date for the San Joaquin Valley nonattainment area, the area did not have the requisite clean air data, and, as we propose to find, the State has not implemented its applicable SIP.

[2] See generally 57 FR 13506 (April 16, 1992) and *Memorandum* from D. Kent Berry, Acting Director, Air Quality Management Division, EPA, to Regional Air Office Directors; ''Procedures for Processing Bump Ups and Extensions for Marginal Ozone Nonattainment Areas,'' February 3, 1994. While explicitly applicable only to marginal areas, the general procedures for evaluating attainment in this memorandum apply regardless of the initial classification of an area because all findings of attainment are made pursuant to the same Clean Air Act requirements in section 181(b)(2).

TABLE 1.—OZONE AIR QUALITY IN THE SAN JOAQUIN VALLEY NONATTAINMENT AREA (1997–1999)—Continued

Monitoring site	Number of days over the standard 1997–1999	Average number of exceedance days per year	Site design value (ppm)
Edwards [3]	6	2.0	0.139

D. Failure To Attain Triggers Reclassification to Severe Nonattainment and Required Submittal of a Severe Area Plan

Under section 181(a)(1) of the Act, the attainment deadline for serious ozone nonattainment areas reclassified to severe under section 181(b)(2) is as expeditiously as practicable but no later than November 15, 2005. Under section 182(i), such areas are required to submit SIP revisions addressing the severe area requirements for the 1-hour ozone NAAQS. These requirements are found in CAA section 182(d). Section 182(i) further provides that we may adjust the CAA deadlines for submitting these severe area SIP requirements.

Pursuant to section 182(i), we intend to require submittal of the severe area SIP revisions no later than 18 months from the effective date of the area's reclassification. We believe that an 18-month schedule is appropriate because of the complexities of developing a revised attainment and rate of progress plan for the area and then preparing a new, severe area plan. Furthermore, it allows the San Joaquin Valley to incorporate into the federally-required severe area plan elements of the California Clean Air Act-mandated revisions to its state plan that are due in December 2000.[4]

Under section 182(d), severe area plans are required to meet all the requirements for serious area plans plus the requirements for severe areas, including, but not limited to: (1) a 25 ton per year major stationary source threshold; (2) additional reasonably available control technology (RACT) rules for sources subject to the new lower major source applicability cutoff; (3) a new source review (NSR) offset requirement of at least 1.3 to 1; (4) a rate of progress in emission reductions of ozone precursors of at least 3 percent per year from 2000 until the attainment year; and (5) a fee requirement for major sources of volatile organic compounds (VOC) and nitrogen oxides (NO_X) [5] should the area fail to attain by 2005.[6] We have issued a ''General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990'' that sets forth our preliminary views on these section 182 requirements and how we will act on SIPs submitted under Title I. See generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992).

The San Joaquin Valley's severe area plan must also contain adopted regulations, and/or enforceable commitments to adopt and implement control measures in regulatory form by specified dates, sufficient to make the required rate of progress and to attain the 1-hour ozone NAAQS as expeditiously as practicable but no later than November 15, 2005. It is the responsibility of the California Air Resources Board (CARB) and the air districts to determine the appropriate mix of measures. Nevertheless, for the SJVUAPCD, we strongly suggest that consideration be given to including in the revised plan measures for source categories where CARB has identified the current San Joaquin Valley requirements as not meeting the State's ''all feasible measures'' criteria. These source categories are: Restaurants, Chain Driven Charbroilers; Stationary IC Engines; Bakery Ovens; Fugitive Emissions of VOC from Oil and Gas Production and Processing Facilities; Refineries; Chemical Plants and Pipeline Transfer Stations; Refinery Boilers (also Small Industrial, Institutional and Commercial Boilers, Steam Generators and Process Heaters); Adhesives and Sealants; Automotive Refinishing; Pleasure Craft Coating Operations; Stationary Gas Turbines; and Polymeric Foam Product Manufacturing.[7]

The new attainment demonstration should be based on the best information available. Currently, there is a comprehensive ozone study being undertaken in the Central Valley, called the Central California Ozone Study (CCOS). While we realize that the results from CCOS may not be completed in time to develop a new air quality model for use in the severe area plan, the State should, to the extent possible, use available new data from CCOS to improve the performance of the existing model.

Two of the new severe area SIP requirements, the 25 ton per year (tpy) major source cutoff for VOC and NO_X and the NSR offset ratio of 1.3:1, will require revisions to existing SJVUAPCD and KCAQMD regulations. We discuss the timeframes for these revisions below.

1. San Joaquin Valley Unified APCD

We propose that San Joaquin Valley Rule 2201, which implements the federal NSR program, must be revised within 180 days of the final date of the reclassification to ensure that the District's definitions of ''Major Source'' and ''Distance Offset Ratio'' reflect the new severe area requirements.[8] We

[3] The Edwards monitor is a special purpose monitor (SPM) operated by the Air Force on Edwards Air Force Base in eastern Kern County. Under applicable Agency policy, we make attainment determinations for ozone nonattainment areas using all available, quality-assured air quality data including any available quality-assured data from SPM sites that meet the requirements of 40 CFR § 58.13. See *Memorandum* John Seitz, Director, OAQPS, to Regional Air Directors; ''Agency Policy on the Use of Ozone Special Purpose Monitoring Data,'' August 22, 1997. We have evaluated the Edwards site and its quality assurance information and have determined that its data are valid for this attainment determination and therefore should be used in making the finding of nonanttainment.

[4] Under the California Clean Air Act, air districts must submit a progress report and plan revision to the State every three years. The deadline for the next triennial update is December 2000. (See California Health & Safety Code Sections 40924(b) and 40925(a).)

[5] Ozone is not emitted directly into the air, but is formed through the photochemical reaction of NO_X and VOCs.

[6] Section 182(d)(3) sets a deadline of December 31, 2000 to submit the plan revision requiring fees for major sources should the area fail to attain. This date can be adjusted pursuant to CAA section 182(i). We propose to adjust this date to coincide with the submittal deadline for the rest of the severe area plan requirements.

[7] The CCAA requires that California air districts develop attainment plans that achieve a five percent per year reduction in each nonattainment pollutant (or its precursors) or that rely on the implementation of all feasible measures to reach attainment (California Health & Safety Code Section 40914). CARB continually evaluates State air plans against the all feasible measures criteria. CARB's most recent evaluation of the San Joaquin Valley's compliance with the all feasible measures provision of the CCAA was released in the October 8, 1999 staff report entitled ''Public hearing to Consider Approval of the San Joaquin Valley Unified Air Pollution Control District's Triennial Progress Report and Plan Revision 1995–1997 Under the California Clean Air Act.''

[8] Section 182(i) of the CAA allows EPA to adjust any applicable deadlines ''* * * to the extent such adjustment is necessary or appropriate to assure consistency among the required submissions.''

propose to set the deadline to complete and submit such rule revisions at 180 days because it is consistent with the 6 month time frame we gave Sacramento to revise its NSR rule following a reclassification to severe [9] and with the time frame provided for similar changes in the Title V operating permits arena (40 CFR part 70.4(i)). See below. If SJVUAPCD fails to submit NSR rule revisions that address the new severe area requirements within the 180-day deadline, we will start a sanctions clock pursuant to CAA section 179(a)(1) for failure to submit a required SIP revision.

San Joaquin Valley Rule 2520, which implements the federal Title V operating permits program, must also be revised within 180 days of the final date of the reclassification to ensure that the District's definition of ''major source'' (and hence, Title V applicability) reflects the lower VOC and NO_X threshold (40 CFR part 70.4(i)). Since the District's definition of ''Major Source'' in Rule 2520 references the District's NSR definition of ''New and Modified Stationary Source,'' the necessary revision could be accomplished simply by modifying NSR Rule 2201. If the required revision is not made within 180 days, then the San Joaquin Valley will be subject to the sanctions provisions outlined in 40 CFR sections 70.10(a)(1)(i) and (ii).

The lowering of the major source threshold from 50 tpy to 25 tpy will make sources previously considered nonmajor to become major, thereby subjecting them to Title V. These newly major sources must submit Title V permit applications within one year of the date that the SJVUAPCD makes the required revision to Rule 2520. The District then has 18 months from receipt of a complete application to take final action on each permit application (40 CFR part 70.7(a)(2)). We recognize that the new lower threshold of 25 tpy is expected to result in an almost doubling of Title V sources in the San Joaquin Valley. We will work with the District in meeting the 18-month permit issuance deadline and will evaluate their progress at that time.

2. Kern County APCD

We propose that Kern County Rule 210.1, which implements the federal NSR program, must be revised within 180 days of the final date of the reclassification to ensure that the District's definition of ''Major Source'' reflects the new severe area requirements. We propose to set the deadline to complete and submit such rule revisions at 180 days because it is consistent with the 6 month time frame we gave Sacramento to revise its NSR rule following a reclassification to severe and with the time frame provided for similar changes in the Title V operating permits arena (40 CFR part 70.4(i)). (See below.) If KCAPCD fails to submit NSR rule revisions that address the new severe area requirements within the 180-day deadline, we will start a sanctions clock pursuant to CAA section 179(a)(1) for failure to submit a required SIP revision.[10]

Kern County Rule 201.1, which implements the federal Title V operating permits program, must also be revised within 180 days of the final date of the reclassification to ensure that the District's definition of ''major source'' (and hence, Title V applicability) reflects the lower VOC and NO_X threshold (40 CFR part 70.4(i)). If the required revision is not made within 180 days, then KCAPCD will be subject to the sanctions provisions outlined in 40 CFR sections 70.10(a)(1)(i) and (ii).

The lowering of the major source threshold from 50 tpy to 25 tpy will make sources previously considered nonmajor become major, thereby subjecting them to Title V. These newly major sources must submit Title V permit applications within one year of the date that KCAPCD makes the required revision to Rule 210.1. The District then has 18 months from receipt of a complete application to take final action on each permit application (40 CFR part 70.7(a)(2)). We recognize that the new lower threshold of 25 tpy will likely increase the number of Title V sources in eastern Kern County. We will work with the District in meeting the 18-month permit issuance deadline and will evaluate its progress at that time.

E. Transportation Conformity Implications of Reclassification

The ozone reclassification would not immediately affect the transportation conformity budgets in the San Joaquin Valley. The existing approved VOC and NOx serious attainment budgets limit emissions of ozone precursors for the attainment year 1999. Currently, since no future year ozone budgets have been developed, these budgets apply to all future years. However, once new severe area budgets are submitted and have been determined adequate, those severe budgets would set emission caps for any milestone years (2002), the new attainment year (2005), and all years beyond the attainment year. The serious budgets would only apply for the year 1999 and all subsequent years until the new milestone or attainment budget dates.

Establishing new severe budgets in the San Joaquin Valley is particularly challenging because there are eight separate transportation agencies within the nonattainment boundary. The severe area SIP should clearly identify and precisely quantify conformity budgets for any milestone years (2002), the attainment year (2005), and, if desired, future years. To be adequate, the severe attainment demonstration must also contain emissions and air dispersion modeling that show motor vehicle emissions at the budget levels will achieve the required rate of progress milestones and timely attainment (taking into consideration all emission sources and growth). The modeling should be done for all years that establish conformity budgets. The data (vehicle miles traveled [VMT]) for the modeling and the budgets should be established in consultation with appropriate local, state and federal agencies to assure that the latest estimates of growth are incorporated into the SIP.

The attainment demonstration may establish emissions budgets for subareas within the region only if the modeling in the SIP demonstrates that, when all subarea budgets are considered, the area will still result in attainment of the standard. Establishment of subarea budgets, however, must be fully supported in the SIP documentation since development of the subarea budgets would allow individual subareas (*e.g.,* counties) to complete separate conformity determinations. In addition, the subarea budgets would limit growth of emissions in each individual area—there would be no allowance for shifting of growth from one subarea to another subarea within the nonattainment area.

II. The Proposed Nonimplementation Finding

A. San Joaquin Valley Serious Area Ozone Nonattainment Plan

The CAA required California to submit a serious area ozone SIP for the San Joaquin Valley that demonstrated a minimum rate of progress towards attainment and attainment of the 1-hour ozone NAAQS as expeditiously as practicable but no later than November 15, 1999. CAA sections 181(a) and 182(c). The deadline for the submittal of this SIP was November 15, 1994. CAA section 182(c)(2).

[9] Letter from David P. Howekamp, Director of the Air & Toxics Division, EPA Region IX, to James Boyd, Executive Officer, CARB, dated June 8, 1995.

[10] Kern County Rule 210.1 already requires an offset ratio of 1:1.3, so the District does not have to revise the rule to meet this CAA requirement for severe areas.

On November 15, 1994, the California Air Resources Board (CARB) submitted ''The 1994 California State Implementation Plan for Ozone,'' a comprehensive ozone plan for the State of California that included a local nonattainment plan developed for the San Joaquin Valley by the SJVUAPCD (1994 San Joaquin Valley plan).

B. EPA's Approval of the San Joaquin Valley Serious Area Ozone Plan

In order to be approved, the 1994 San Joaquin Valley plan had to meet the requirements for serious ozone nonattainment areas in CAA section 182(c). We reviewed the 1994 San Joaquin Valley plan against these requirements and approved it as part of the California Ozone SIP on January 8, 1997. Among other things, the plan demonstrated that, through a combination of State and local control measures, the San Joaquin Valley would attain the 1-hour ozone standard by November 15, 1999. For a detailed discussion of our approval, please refer to the proposed and final rulemakings published in the **Federal Register** on March 18, 1996 (61 FR 10920) and January 8, 1997 (62 FR 1150).

C. CAA Requirements for Plan Implementation and NAAQS Attainment

Following our approval of a nonattainment plan, the plan must be implemented to assure that the necessary progress toward and attainment of the relevant air quality standard by the applicable deadline. CAA section 179(a)(4).

Under CAA section 179(a)(4), we have the discretionary authority to make a finding of nonimplementation if we determine that a state has failed to implement any requirement of an approved plan or approved part of a plan. If we make a final finding of nonimplementation after public notice and comment, the State must correct the failure to implement within 18 months or sanctions will be applied to the area pursuant to CAA sections 179(a) and (b).

D. Proposed Finding of Failure To Implement the 1994 San Joaquin Valley Plan

In its most basic sense, plan implementation means that the control (and other) measures relied on for attainment are being adopted, are in effect, and are achieving their specified emissions reductions. Plan implementation can also apply to any other requirement in a plan such as a requirement for a reasonable further progress demonstration. When a requirement in a plan has a future date associated with it, there can be no failure to implement that requirement until the date associated with it has passed.

The 1994 San Joaquin Valley plan identifies 20 local stationary and area source control measures or control measure revisions and several transportation control measures that together were projected to achieve a 31.9 ton per day (tpd) reduction in volatile organic compounds (VOCs) and a 37.2 tpd reduction in nitrogen oxides (NO_X).[11] These measures were to be adopted by the SJVUAPCD. We are proposing to find that the SJVUAPCD has failed to implement the 1994 San Joaquin Valley plan because the deadlines in the plan for adopting and implementing six of the 20 measures (see list in Table 2) have passed and the measures have not been adopted or implemented. These six measures were projected to achieve a total of 8.09 tpd reductions in VOC emissions in 1999.[11]

TABLE 2.—IMPLEMENTATION DEFICIENCIES IN THE 1994 SAN JOAQUIN VALLEY PLAN

Control measure title	Date when rule was required to be adopted	Date when rule was required to be implemented	Projected emissions reductions
Rule 4601 Architectural Coatings	1Q/96	1Q/98	1.51 tpd VOC.
Rule 4662 Organic Solvent Degreasing	1Q/96	1Q/98	2.44 tpd VOC.
Rule 4692 Commercial Charbroiling	2Q/96	2Q/98	0.39 tpd VOC.
Rule 4623 Organic Liquid Storage	3Q/95	3Q/98*	3.0 tpd VOC.
Rule 4411 Oil Production Well Cellars	2Q/96	2Q/98	0.56 tpd VOC.
Rule 4663 Organic Solvent Waste	2Q/96	2Q/98	0.19 tpd VOC.

The SIP indicated that implementation of this Rule could extend beyond 1999.

If we make final this proposed nonimplementation finding, SJVUAPCD must correct the implementation deficiencies in order to stop sanction clocks triggered by the finding under CAA section 179(a). In order to correct the implementation deficiencies and stop the sanction clocks, SJVUAPCD must adopt as rules and implement the measures listed in Table 2 in a manner that will achieve in total the 8.09 tpd of emissions reductions specified in the SIP for them. SJVUAPCD must adopt these rules as expeditiously as practicable. Additionally, it must also provide for the implementation of the rules as expeditiously as practicable but implementation should be no later than November 15, 2002, the first rate of progress milestone.

E. Sanction Clocks for the Failure To Implement

Under CAA section 179(a)(4), if we make a finding that a requirement of an approved plan is not being implemented, then the deficiency identified in the finding must be corrected within 18 months or sanctions will be applied. There are two types of sanctions: (1) Highway sanctions (CAA section 179(b)(1)) and (2) offset sanctions (CAA section 179(b)(2)).

Under these sanction provisions, if SJVUAPCD has not adopted the measures listed in Table 2 with implementation deadlines of on or before November 15, 2002 within 18 months of the effective date of a final finding, the 2 to 1 offset sanction in CAA section 179(b) will apply to that portion of the San Joaquin Valley nonattainment area under the jurisdiction of the SJVUAPCD.[12] This sanction requires a company that is constructing a new or modifying an existing facility over a certain size to reduce emissions in the area by 2 tons of VOCs or NO_x for every new ton of

[11] See Table 4–1 in ''The Ozone Attainment Demonstration Plan,'' SJVAPCD, adopted November 14, 1994.

[12] As noted before, the SJV nonattainment area also includes eastern Kern County which is under the separate jurisdiction of the Kern County APCD. Because we are proposing no sanctionable findings applicable to the area under the jurisdiction of the KCAPCD, any sanctions that go into effect in the rest of the SJV nonattainment area because of this proposed nonimplementation finding will not apply to eastern Kern County. We note that a finding of failure to attain pursuant to CAA section 181(b)(1)(A) is not sanctionable under the Act.

VOC or NOx the new/modified facility will emit.

If the SJVUAPCD still has not corrected the deficiencies six months after the offset sanction is imposed, then the highway approval and funding sanction will apply in the San Joaquin Valley portion of nonattainment area. This sanction prohibits the U.S. Department of Transportation from approving or funding all but a few specific types of transportation projects.

The order of sanctions, offsets sanctions first then highway sanctions, is set in EPA's regulations at 40 CFR 52.31. If sanctions have been imposed, they will be lifted when we determine, after an opportunity for public comment, that the implementation deficiencies have been corrected.

III. Summary of EPA Proposals

We propose to find that the San Joaquin Valley ozone nonattainment area has failed to attain the federal 1-hour ozone standard by its CAA deadline of November 15, 1999. If we make final this finding, the San Joaquin Valley nonattainment area will be reclassified by operation of law to severe and California must submit to EPA, within 18 months of the effective date of the finding, a severe area nonattainment plan that provides for the attainment of the federal 1-hour ozone standard as expeditiously as practicable, but no later than November 15, 2005 and meets the requirements of CAA section 182(d).

We also propose to find that the SJVUAPCD has failed to fully implement the approved 1994 San Joaquin Valley ozone plan. If we make final this finding, in order to avoid CAA sanctions, SJVUAPCD must adopt within 18 months the six measures listed in Table 2 of this preamble and provide for their implementation as expeditiously as practicable but no later than November 15, 2002. These measures must be sufficient to achieve an 8.09 tpd reduction in VOC. If sanctions are imposed, they will be terminated once we find that all the deficiencies have been corrected.

IV. Administrative Requirements

A. Executive Order 12866 (E.O. 12866)

Under E.O. 12866, (58 FR 51735, October 4, 1993), EPA is required to determine whether today's proposal is a ''significant regulatory action'' within the meaning of the E.O., and therefore should be subject to OMB review, economic analysis, and the requirements of the E.O. See E.O. 12866, sec. 6(a)(3). The E.O. defines, in sec. 3(f), a ''significant regulatory action'' as a regulatory action that is likely to result in a rule that may meet at least 1 of 4 criteria identified in section 3(f), including, (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.

EPA has determined that neither the finding of failure to attain, nor the finding of nonimplementation, would result in any of the effects identified in E.O. 12866 sec. 3(f). As discussed above, findings of failure to attain under section 181(b)(2) of the Act are based upon air quality considerations, and reclassifications must occur by operation of law in light of certain air quality conditions. These findings do not, in and of themselves, impose any new requirements on any sectors of the economy. In addition, because the statutory requirements are clearly defined with respect to the differently classified areas, and because those requirements are automatically triggered by classifications that, in turn, are triggered by air quality values, findings of failure to attain and reclassification cannot be said to impose a materially adverse impact on State, local, or tribal governments or communities. Similarly, the finding of failure to implement the SIP merely ensures the implementation of already existing requirements by creating the potential for the imposition of sanctions and therefore does not adversely affect entities.

B. Executive Order 13132

Executive Order 13132, ''Federalism,'' (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612, ''Federalism,'' and 12875, ''Enhancing the Intergovernmental Partnership.'' Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that 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.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

These proposed findings will not have substantial direct effects on California, on the relationship between the national government and California, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132.

EPA is proposing two actions: a finding that the San Joaquin Valley ozone nonattainment area has failed to attain the ozone NAAQS by the statutory deadline and a finding that the San Joaquin Valley ozone plan, adopted by the State and approved by EPA, has not been fully implemented. Findings of failure to attain under section 181(b)(2) of the Act are based upon air quality considerations, and reclassifications must occur by operation of law in light of certain air quality conditions. These findings do not, in and of themselves, impose any new requirements. In addition, because the statutory requirements are clearly defined with respect to the differently classified areas, and because those requirements are automatically triggered by classifications that, in turn, are triggered by air quality values, findings of failure to attain and reclassification cannot be said to impose a materially adverse impact on State, local, or tribal governments or communities. A finding of nonimplementation has no direct effects on the State; there is simply a potential for the imposition of sanctions if the State does not adopt the rules to which it has committed under its own State plan. Thus, the requirements of section 6 of the Executive Order 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. These proposed findings are not subject to E.O. 13045 because they do not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.'' Today's proposed findings do not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rulemaking.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. These proposed findings will not have a significant impact on a substantial number of small entities for the reasons set forth in section VI.B. above. Therefore, because these proposed findings do not create any new requirements, I certify that they will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

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

EPA has determined that the proposed findings do not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector for the reasons set forth in section IV.B. above. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from these actions.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen oxides, Ozone, Volatile organic compounds.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

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

Dated: June 7, 2000.

Felicia Marcus,

Regional Administrator, Region IX.

[FR Doc. 00–15391 Filed 6–16–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 268

[FRL–6718–8]

RIN 2050–AE53

Land Disposal Restrictions: Advance Notice of Proposed Rulemaking

AGENCY: Environmental Protection Agency.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Environmental Protection Agency (EPA) is giving advance notice of issues and potential directions we are considering for improving the Land Disposal Restrictions (LDR) program for treating hazardous waste under the Resource Conservation and Recovery Act (RCRA). These issues and directions arise from a number of internal and external sources, including the participants at two LDR roundtable meetings. We are requesting comments on all of these issues, directions, and options. In some cases we are requesting additional data that will allow us to better evaluate possible changes to the LDR regulations.

DATES: To make sure we consider your comments we must receive them by September 18, 2000.

ADDRESSES: If you wish to comment on this advanced notice of proposed rulemaking (ANPRM), you must send an original and two copies of the comments referencing Docket Number F–2000–LRRP–FFFFF to: RCRA Docket Information Center, Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters (EPA HQ), Ariel Rios Building, 1200 Pennsylvania Avenue, N.W., Washington, DC 20460, or (2) if using special delivery, such as overnight express service. Hand deliveries of comments should be made to the Arlington, VA address listed below. You may also submit comments electronically by sending electronic mail through the Internet to: rcra-docket@epamail.epa.gov. You should

identify comments in electronic format with the docket number F–2000–LRRP–FFFFF. You must submit all electronic comments as an ASCII (text) file, avoiding the use of special characters or any type of encryption. If you do not submit comments electronically, EPA is asking prospective commenters to voluntarily submit one additional copy of their comments on labeled personal computer diskettes in ASCII (text) format or a word processing format that can be converted to ASCII (text). It is essential to specify on the disk label the word processing software and version/edition as well as the commenter's name. This will allow EPA to convert the comments into one of the word processing formats utilized by the Agency. Please use mailing envelopes designed to physically protect the submitted diskettes. EPA emphasizes that submission of diskettes is not mandatory, nor will it result in any advantage or disadvantage to any commenter.

You should not submit electronically any confidential business information (CBI). You must submit an original and two copies of CBI under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. Environmental Protection Agency Headquarters (EPA HQ), Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington, DC 20460.

You may view public comments and supporting materials in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9 am to 4 pm Monday through Friday, excluding federal holidays. To review docket materials, we recommend that you make an appointment by calling 703–603–9230. You may copy up to 100 pages from any regulatory document at no charge. Additional copies cost $ 0.15 per page. (For info on accessing paper and/or electronic copies of the document, see the **SUPPLEMENTARY INFORMATION** section).

FOR FURTHER INFORMATION CONTACT: For general information, call the RCRA Hotline at 1–800–424–9346 or TDD 1–800–553–7672 (hearing impaired). Callers within the Washington Metropolitan Area must dial 703–412–9810 or TDD 703–412–3323 (hearing impaired). The RCRA Hotline is open Monday–Friday, 9 am to 6 pm, Eastern Standard Time. For more information on specific aspects of this ANPRM, contact Josh Lewis at 703–308–7877, lewis.josh@epa.gov, or write him at the Office of Solid Waste (5302W), U.S. Environmental Protection Agency Headquarters (EPA HQ), Ariel Rios Building, 1200 Pennsylvania Avenue, N.W., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: The index and selected supporting materials are available on the Internet. Follow these instructions to access the information electronically: WWW:http://www.epa.gov/epaoswer/osw/hazwaste.htm#ldr

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

Formal comment responses are not typically required following an ANPRM. However, EPA is considering the preparation of a comment response document. In the event that EPA prepares such a document, EPA's responses will be placed in the official record. EPA will not immediately reply to commenters other than to perhaps seek clarification of electronic comments that may be garbled in transmission or during conversion to paper form, as discussed above.

Glossary of Acronyms

AEA—Atomic Energy Act
ALARA—As Low As Reasonably Achievable
BDAT—Best Demonstrated Available Technology
BRS—Biennial Reporting System
CWA—Clean Water Act
DET—Determination of Equivalent Treatment
DOE—Department of Energy
ETC—Environmental Technology Council
HDPE—High Density Polyethylene
HWIR—Hazardous Waste Identification Rule
HSWA—Hazardous and Solid Waste Amendments
HTMR—High Temperature Metals Recovery
LDR—Land Disposal Restrictions
LDRite—LDR Innovative Technology Evaluation
MSWL—Municipal Solid Waste Leachate
NPDES—National Pollutant Discharge Elimination System
NRC—Nuclear Regulatory Commission
PBT—Persistent, Bioaccumulative, and Toxic
RCRA—Resource Conservation and Recovery Act
RTHRM—Thermal Recovery (LDR Specified Treatment Method)
STABL—Stabilization (LDR Specified Treatment Method)
TC—Toxicity Characteristic
TCLP—Toxicity Characteristic Leaching Procedure
TOC—Total Organic Carbon
UHC—Underlying Hazardous Constituent
UTS—Universal Treatment Standard
WMNP—Waste Minimization National Plan

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I. General Information

A. What Is the LDR Program?

In 1984, Congress created EPA's Land Disposal Restrictions (LDR) program. The LDR program ensures that toxic constituents present in hazardous waste are properly treated before the hazardous waste is land disposed. The LDR program has developed technology-based treatment standards that all hazardous wastes must meet before they can be placed in a landfill. These standards help minimize short-term and long-term threats to human health and the environment.

B. What Is the Purpose of This LDR ANPRM?

In this Advance Notice of Proposed Rulemaking (ANPRM), EPA is giving advance notice of issues and potential directions we are considering for improving the LDR program for treating hazardous waste under the Resource Conservation and Recovery Act (RCRA). We want to ensure that the LDR program is minimizing threats to human health and the environment in the most appropriate way. By appropriate we mean: (1) Environmentally protective; (2) cost-effective; (3) flexible for implementors and the regulated community; and (4) clear and enforceable.

C. What Has Led Up to This ANPRM?

We interviewed representatives from EPA Headquarters, EPA Regions, States, and LDR experts in the regulated community and in environmental groups. These representatives identified problems, issues, and possible improvements to the LDR program. Next, we examined the recommendations made at the 1993 LDR roundtable [1] to identify promising implementation ideas that have not been addressed. Finally, we conducted site visits with nine generators and treatment facilities to get first-hand knowledge of LDR implementation.

Through initial scoping activities described above, public comments submitted on past LDR proposed rules, public inquiries made to the Waste Treatment Branch, general experience working on LDR issues, and a second LDR roundtable held in 1998, we have compiled the issues, options, and directions listed and discussed below.

D. What Issues Does This ANPRM Discuss?

This ANPRM presents several issues, options, and directions that could potentially lead to changes in the LDR regulations. Below is a list of issues that we are considering in this notice.

(1) Ways for the LDR program to encourage the use of source reduction and recycling.

(2) Ways for the LDR program to encourage innovative treatment technologies and to incorporate these technologies into the LDR program.

(3) The long-term effectiveness of stabilization treatment for hazardous metal wastes. In particular, we are looking at whether metal constituents leach out of stabilized wastes over time and whether alternative approaches to evaluating the effectiveness of treatment by immobilization technologies exist.

(4) Whether to develop treatment standards for additional constituents of concern (*e.g.,* metals) in listed solvent wastes.

(5) Whether better ways exist to ensure the treatment standards for reactive wastes are adequately protective.

(6) Ways to allow public input into EPA's decision on requests for Determinations of Equivalent Treatment.

(7) The appropriate regulatory response regarding the treatment

[1] On January 13–14, 1993 EPA convened a roundtable to discuss potential improvements to the LDR program. The discussion topics included monitoring, administrative requirements/regulations, and treatment standards. Based on the discussions at the roundtable and our follow-up study of the issues from the roundtable, we made a number of changes to the LDR program. One of the changes involved the establishment of a single universal treatment standard (UTS) for most LDR-regulated constituents in wastewaters and nonwastewaters. The UTS eliminated situations in which a common constituent found in multiple wastes carried different numerical treatment standards (see 59 FR 47982, September 19, 1994).

standards for hazardous debris and, in particular, look at whether macroencapsulation is the most appropriate treatment for debris contaminated primarily with organic compounds.

(8) Whether to establish treatment standards for incineration ash to reduce paperwork burden and possibly reduce analytical costs associated with the carry through of multiple waste codes.

(9) Whether to establish targeted treatment standards for radioactive mixed waste (*i.e.,* wastes that are both hazardous under RCRA and radioactive) and consider other instances when it might be appropriate to establish methods of treatment rather than concentration limits to avoid radiological risks associated with compliance monitoring.

E. Who Will These Issues Affect?

They potentially affect all those who are subject to the land disposal restrictions as well as implementors of the LDR program.

F. How Will This ANPRM Impact Small Businesses and State Programs?

Because we are not proposing any new regulations in this notice, this ANPRM will not impact small businesses. We will, however, be mindful of the impact that any potential changes may have, and we are requesting comment on the potential costs and benefits to small businesses should revisions be made to the LDR program as described in this ANPRM. Suggestions on ways we might mitigate any adverse effects would also be welcome.

We will also be cognizant of the impact of any proposed revisions to the LDR program on State programs, and we encourage comments on this subject.

G. Will Any Potential Changes Arising From This ANPRM Be More Stringent Than Current Requirements?

It is premature to say at this point. Some of the possible changes may be more stringent, such as potentially regulating metal constituents in solvent wastes. Other potential changes may provide some relief to the regulated community, such as the possible establishment of tailored treatment standards for mixed wastes.

H. When Will Any Potential Changes to the Current LDR Regulations Take Effect?

Our time frame for action in part depends on your comments and suggestions. We will thoroughly review your comments and suggestions to determine their feasibility, and any potential changes in the regulations will be proposed in future rulemakings.

I. How Do the Issues Presented in This ANPRM Relate to Other Recent EPA Notices?

This ANPRM includes some issues that affect other recently released EPA notices. The following is a list of these notices, including a brief description of each notice and how it relates to this ANPRM:

(1) ANPRM on potential revisions to the LDR mercury treatment standards (64 FR 28949, May 28, 1999)—gives advance notice of EPA's comprehensive reevaluation of the treatment standards for mercury-bearing hazardous wastes as well as various options, issues, and data needs related to potential revisions to the mercury treatment standards. One of the options the mercury ANPRM discusses is the possibility of adding a subcategory to the LDR treatment standards for high mercury subcategory wastes that are also radioactive. See the section entitled ''Should EPA Establish Tailored Treatment Standards for Mixed Wastes?'' in this notice for more information.

(2) Office of Solid Waste Burden Reduction Project Notice of Data Availability (64 FR 32859, June 19, 1999)—solicits comment on burden reduction options. See the section entitled ''Is EPA Doing Anything in this Rule to Decrease Paperwork Burden?'' in this notice for further information.

(3) Hazardous Waste Identification Rule (HWIR) proposed rule (64 FR 63381, November 19, 1999). HWIR contains two important areas of overlap with the RCRA LDR program. First, HWIR is requesting comment on whether HWIR exemption levels should ''cap'' existing technology-based LDR standards, where the exemption levels would be less stringent than the current LDR values. If a waste contains only constituents with ''capped'' LDR values, it would satisfy LDR requirements and become exempt from the definition of hazardous waste for all other purposes once the other requirements of the HWIR exemption were satisfied. Second, if a listed waste is below the HWIR exemption concentrations where the waste is ''first'' generated (the point where a waste first meets the listing description) and the waste meets all the other requirements of the HWIR exemption, then a hazardous waste would never really be ''generated'' and the LDR requirements would not attach to the waste. In contrast, once a listed waste is generated and managed, the LDR requirements would attach, and the waste would need to meet LDRs before being disposed.

II. Customer Service

A. How Can You Influence EPA's Thinking on This ANPRM?

In developing this ANPRM, we tried to address the concerns and viewpoints of a wide variety of stakeholders. Your comments will help us improve this ANPRM. We invite you to provide different views on options we describe, new approaches we have not considered, new data on how the options we describe may affect you, or other relevant information. We welcome your views on all aspects of this ANPRM and in particular on the items described in the ''Request for comment'' subsection found at the end of each preamble section. Your comments will be most effective if you follow the suggestions below:

- Explain your views as clearly as possible and why you feel that way.
- Provide solid technical and cost data to support your views. If you are going to submit technical data, make sure that it has been quality assured/quality controlled (QA/QC).
- If you estimate potential costs, explain how you arrived at the estimate.
- Tell us which parts you support, as well as those you disagree with.
- Provide specific examples to illustrate your concerns.
- Offer specific alternatives.
- Refer your comments to specific sections of the ANPRM, such as the units or page numbers of the preamble, or the regulatory sections.
- Make sure to submit your comments by the deadline in this notice.
- Be sure to include the name, date, and docket number with your comments.

III. How Can the LDR Program Further Encourage Source Reduction and Recycling?

A. What Does This Section of the ANPRM Discuss?

This section asks the question: How can the LDR program further encourage source reduction and recycling? We request from you, the general public, (1) comments on the Agency's ideas to encourage source reduction and recycling; and (2) other suggestions on how this program can further encourage source reduction and recycling while meeting the Agency's policy objectives and legal standards.

B. Why Do We Want to Further Encourage Source Reduction and Recycling?

One objective of the Resource Conservation and Recovery Act

(RCRA)—the major hazardous waste statute—is to minimize the generation of hazardous waste and the land disposal of hazardous waste by encouraging process substitution, materials recovery, properly conducted recycling and reuse, and treatment (see RCRA § 1003(a)(6)). To further this objective, the Agency has set as goals of its Waste Minimization National Plan [2] (WMNP) to:

(1) Reduce, as a nation, the presence of the most persistent, bioaccumulative, and toxic (PBT) chemicals [3] in RCRA hazardous wastes 10 percent by the year 2000, and at least 50 percent by the year 2005 (from a 1991 baseline);

(2) Promote source reduction (and recycling where RCRA PBT chemicals cannot be reduced at the source) over treatment and disposal technologies; and

(3) Avoid the transfer of RCRA PBT chemicals across environmental media.

Consistent with the goals of RCRA and the WMNP, we are seeking ideas on how the LDR program can better or more directly encourage the reduction or elimination of hazardous waste generation through source reduction and recycling. Your comments and suggestions will help us reach our ultimate goal of incorporating source reduction and recycling processes as integral parts of our LDR program.

C. What Are Our Ideas?

(1) To Encourage Source Reduction: Set a Two-Part LDR Treatment Standard

We are considering the usefulness and appropriateness of a two-part LDR treatment standard for wastes when we are revising hazardous waste treatment standards (such as with mercury hazardous wastes) and when we are setting treatment standards for newly listed hazardous wastes. The first part would be the establishment of a traditional standard, developed from data based on the best demonstrated available treatment technologies. This is essentially the way we set treatment standards today. The second and novel part would be to simultaneously develop an alternative standard that facilities could elect to use instead of the first, more traditional standard. This alternative standard would involve installing source reduction-oriented process changes that would reduce either the volume of waste produced or the concentration of the hazardous constituent in the wastes or both. We would develop incentives to encourage companies to comply with the alternative standard to move up the RCRA hierarchy.[4] For example, if the alternative standard is elected, then as an incentive we could extend the effective date for a revised treatment standard beyond the traditional 90 days to allow time to implement the new process. We would determine the length of such an extension as we further develop our ideas.

This source reduction treatment standard option is similar to a Pollution Prevention Compliance Option [5] developed for characteristic wastewaters injected into Class I nonhazardous injection wells in the LDR Phase III rule. Under this alternative, mass reductions can be achieved by removing hazardous constituents from any of the waste streams that are going to be injected, and these reductions in mass loadings can be accomplished by means of source reduction (*i.e.,* equipment or technology modifications, process or procedure modifications, reformulation or redesign of products, substitution of raw materials, and improvements in housekeeping, maintenance, training, or inventory control), recycling, or conventional treatment. This regulation along with others promulgated in the Phase III rule were superseded when the Land Disposal Program Flexibility Act of 1996 was signed. This statutory provision allows the land disposal of formerly characteristic wastewaters so long as they are not hazardous at the point they are land disposed.

(2) To Encourage Source Reduction for Wastes With Existing Treatment Standards: Establish a New Basis for Granting Treatment Variances

We are considering adding a new basis for granting treatment variances. This new basis would allow facilities to petition for an alternative LDR treatment standard based on installing source reduction-oriented process changes. The petitioner would have to demonstrate the specific environmental benefits gained from the incorporation of the source reduction processes. This variance basis may lead to better overall environmental results (for example by reducing the amount of hazardous waste generated, by reducing the toxic constituent concentrations in the hazardous waste, or both).

(3) To Encourage recycling: (a) set Recycling as a Treatment Method for Certain Wastes or (b) Include Recycling as an Alternative Treatment Option for Certain Wastes

We have developed a treatment standard for each hazardous waste code. Each treatment standard is either a set of maximum numerical concentration levels for the constituents in the waste, or a specified treatment technology. See 40 CFR 268.40(a). For seven waste codes,[6] the treatment standards specifically require recycling. For example, RLEAD, or recovery of lead, is the required technology for the lead acid battery subcategory of D008 characteristic lead wastes. For seven other waste codes,[7] the treatment standards include recycling as one of the treatment options. For example, in addition to STABL (stabilization), RTHRM (thermal recovery) is a specified treatment technology for P015, beryllium dust.

We would like to revisit the standards that specify a recycling technology and investigate whether they are effective. If they are effective, we would consider adding recycling as a treatment method for other waste streams that have recoverable levels of constituents. For example, we could revise the LDR treatment standards for K171-spent hydrotreating catalyst from petroleum refining operations and K172-spent hydrorefining catalyst from petroleum refining operations to require either metals recovery for vanadium and nickel or to include metals recovery as a treatment option to the current concentration-based standards. On the other hand, if problems exist with the current recycling requirements, we would consider making useful adjustments as warranted.

[2] See Waste Minimization National Plan, USEPA, 1994, EPA530–R–94–045.

[3] PBT chemicals exhibit varying degrees of three properties: Persistent (P) chemicals do not readily breakdown in the environment; bioaccumulative (B) chemicals are not easily metabolized and can accumulate in human or ecological food chains through consumption or uptake; toxic (T) chemicals may be hazardous to human health or the environment in a variety of ways, depending on the chemical and the organism that is exposed. (63 FR 60332, November 9, 1998)

[4] In 1990, Congress passed the Pollution Prevention Act (PPA), in which they set forth the hierarchy of waste management options: Source reduction, recycling, treatment, disposal.

[5] Pollution Prevention Compliance Option developed and finalized in the LDR Phase III rules (Proposal 60 FR 11702, March 2, 1995 and Final 61 FR 15566, April 8, 1996).

[6] The seven waste codes that specify recycling as the treatment standard are D006—cadmium containing batteries, D008—lead acid batteries, D009—high mercury subcategory of mercury-bearing wastes, K069—emission control dust/sludge from secondary lead smelting non-calcium sulfate high lead subcategory, P015—beryllium dust, P087—osmium tetroxide, and P113—thallic oxide.

[7] The seven waste codes that include recycling as one of the specified treatment standard options are D001—high total organic carbon (TOC), D001—high TOC ignitable characteristic liquids, P115—thallium (I) sulfate, U214—thallium (I) acetate, U215—thallium (I) carbonate, U216—thallium (I) chloride, and U217—thallium (I) nitrate).

D. What Incentives Would There Be To Choose Source Reduce and Recycle?

As previously mentioned, one potential incentive we would consider is extending the effective date of the revised treatment standard beyond the traditional 90 days if we set an alternative two-part LDR treatment standard and you chose the source reduction part of the standard. We may also consider providing other types of incentives.

One potentially positive outcome if we look into setting recycling as a treatment method is that we could investigate whether any recycling residues should remain hazardous wastes.

We solicit your comments on additional incentives that could be provided.

E. What Potential New Requirements Would You Have To Satisfy?

One potential avenue we could elect is to revise the treatment standards to encourage source reduction and recycling. Therefore, you might be subject to a revised set of treatment standards. In addition, for the treatment standards based on source reduction-oriented processes, we would consider requiring new administrative requirements such as contracts, milestones, or progress reports. These requirements would help us keep track of your implementation of source reduction processes at your facility.

F. How Could These Suggested Actions Affect Current Regulations?

As a result of your comments and suggestions, some of the LDR treatment standards could change, while others might not. If we make regulatory changes, such as revising the treatment standards, then the treatment standards table at 40 CFR 40 CFR 268.40 may have additional subcategories. For example, the lead acid battery subcategory of D008 characteristic lead wastes would not be changed so long as it remains environmentally beneficial to recover lead. We might choose to further subcategorize the general D008 characteristic lead wastes category into high and low categories. This new categorization could be based on the total lead concentration of the waste. We would then require a recycling treatment method for the high subcategory lead waste, while the low subcategory lead waste would remain subject to a numerical treatment standard.

Also, we could make the LDR regulations more industry-specific for characteristic wastes. For example, we could set tailored source reduction and recycling-based treatment standards for arsenic characteristic wastes generated by the wood preserving industry. These are just a few of the impacts the Agency's potential actions could have on current regulations. At this early stage, we cannot completely anticipate the potential impacts various actions could have on current regulations. We solicit your comments on potential impacts.

G. Could There Be Non-Regulatory Changes?

Our findings from this notice may or may not result in regulatory changes. We may instead choose to publish a guidance document with our findings and recommendations. Your comments and suggestions would help us to determine whether you would be more inclined to implement the ideas on your own using guidance or whether regulatory requirements would be needed to effect a change in your LDR compliance strategies.

H. Request for Comment

Your comments and suggestions would help us to assess the feasibility of our ideas and where they could be most sensibly applied. Specifically, we request comment on (1) setting a two-part LDR standard; (2) establishing a new basis for granting treatment variances that sets alternative standards based on source reduction-oriented processes; and (3) setting or including recycling as a treatment method for certain wastes.

Also, we would like comment on the best way to begin our efforts on encouraging source reduction and recycling. Should we start with a pilot project for source reduction and another for recycling? Do you know of any industries or waste codes that would be good candidates? Should we focus on waste codes or industries? Should we select those industries generating persistent, bioaccumulative, toxic chemicals? Should we target our efforts by volume of waste generated or focus on wastes that are generated by a significant number of generators? Should we target those wastes where a technology, such as stabilization, may not effectively treat a waste? What criteria should we use to assess recycling technologies? What criteria should we use to assess source reduction-oriented processes? What criteria should we use to establish a baseline for measuring the source reduction-oriented processes?

Also, please include any other ideas on how the LDR program can further encourage source reduction and recycling. You should provide us with a detailed description of your idea, including process parameters, key limitations, time frame for implementation, company's corporate rate of return requirements, viable markets for the recycled product and if possible the potential industries or hazardous waste streams to which your idea could be applied. For any source reduction or recycling technology information that you submit, please include analytical performance data, if available. We will review your ideas and possibly develop further those ideas which are most feasible. Our next steps possibly could include either proposing those ideas in a future proposed rulemaking (if regulatory changes are required) or publishing a resource document.

IV. How Can The LDR Program Encourage The Use of Innovative Waste Treatment Technologies?

A. What Is the LDR Innovative Technology Evaluation (LDRite) Program?

EPA's LDR program wants to explore how best to open the door to new and innovative waste treatment technologies that protect the environment and efficiently manage hazardous waste. Our venue for doing this will be under the aegis of a project we call LDR Innovative Technology Evaluation, or LDRite. This project has two basic near-term objectives—first, to help technology developers understand how their treatment systems could fit into the LDR waste treatment program and, second, to identify the most promising avenue for evaluating innovative waste treatment technologies—either formally or informally—that could help to further minimize threats to human health and the environment. Ultimately, we hope that LDRite will encourage the development of innovative waste treatment technologies that will offer us feasible regulatory alternatives to the technologies currently used to establish LDR treatment standards.

1. Why Develop LDRite at This Time?

Before a hazardous waste is land disposed, organic and inorganic constituents of concern as well as hazardous waste characteristics (such as ignitability, corrosivity, reactivity) must meet standards that sufficiently minimize threats to human health and the environment. Our program accomplishes these goals by establishing technology-based treatment standards for hazardous wastes destined for land disposal. These LDR treatment standards are based on the performance

of best demonstrated available treatment (or BDAT) technologies [8] and specify either numerical concentration-based performance standards or specified methods of treatment.[9]

LDR treatment standards are currently based mainly on two dominant treatment technologies: incineration of organics and stabilization of metals. We recognize that the two technologies used to develop our treatment standards are quite traditional in character, which by itself is not necessarily a disadvantage and may reflect an expectable interplay between technical capability and economics. However, the field of hazardous waste treatment and recycling technologies is not static, and new technologies are being developed continually.

For a number of reasons that we may understand and for others that we now may not, our historical experience in being able to incorporate technology innovations and evolutions into the LDR treatment standards has been quite limited. For example, the 1984 Hazardous Solid Waste Amendment to RCRA required EPA, in essence, to prohibit virtually all hazardous wastes from land disposal unless the waste first meets treatment standards established by EPA. In the 1984 Amendments, Congress gave us strict and tight deadlines for developing this myriad of treatment standards. It was not until May 26, 1998, some 14 years and over a dozen rulemakings later, that EPA concluded this task when we adopted the so-called Phase IV LDR rulemaking. See 63 FR 28556. Because of the sheer magnitude of this effort, our ability to search out, support, and incorporate innovative or non-traditional technologies were significantly constrained.

Now, with the completion of the rulemakings needed to implement the 1984 Amendments, we are in a better position to:

- Reassess BDAT technological frameworks used to establish the treatment standards to see if they still coincide with recent technology innovations,
- As appropriate, rethink earlier technical and policy decisions in light of recent and ongoing developments in the hazardous waste management field, and
- Refocus efforts to provide customer-oriented resources that help ensure hazardous waste destined for land disposal is managed in the most acceptable manner.

2. What Are LDRite's Goals?

In pursuing these overall LDR goals, LDRite will create an environment more conducive to technology developers in the hazardous waste treatment arena by:

- Identifying the knowledge barriers that technology developers may encounter in looking at our RCRA waste treatment regulatory program,
- Taking concrete steps to ensure that the technology developers better understand the avenues by which EPA can learn about and evaluate their technologies; and ultimately
- Providing a well-defined process through which we may be able to incorporate improvements in waste treatment technology into our LDR program.

As another potential benefit of the LDRite project, we would hope that innovative treatment and recycling technologies would also offer economic, cost-saving alternatives to hazardous waste facilities that need to be in compliance with our LDR treatment standards. Finally, we wish to build upon the successes of existing programs for technology innovation, such as the Environmental Technology Verification (http://www.epa.gov/etv) and the Small Business Innovative Research (http://www.epa.gov/ncerqa/sbir) programs. These are described in detail below. One of the key questions to be discussed between stakeholders and EPA is whether these programs offer as yet unrealized opportunities for technology developers to have an impact on the RCRA LDR treatment standards program or whether LDRite needs to be focused in a different manner.

3. What Is An Innovative Technology for the Purposes of the LDRite Program?

We will generally consider a treatment technology to be innovative when:

- An existing BDAT technology is applied to a ''new'' hazardous waste stream [10] and successfully treats or recycles this waste stream to meet or exceed existing treatment standards;
- An existing BDAT technology is modified and successfully treats or recycles hazardous waste streams (''new'' and ''old'') to meet or exceed existing treatment standards; or
- A new technology is developed to treat or recycle a hazardous waste stream to levels that meet or exceed existing treatment standards.

The criteria used to define innovative technologies are meant to be general and non-exclusionary. Our intention is not to create narrow windows of opportunity but rather to provide a framework to understand our use of this term for LDR purposes in a fairly broad and unrestrictive way.

B. Who Could Be Affected by LDRite?

This renewed emphasis on innovative technology development could affect any of the many entities that currently manage hazardous waste. We expect, however, that a partnership-oriented effort will provide positive impacts for everyone involved. For instance, as a hazardous waste:

- Generator you might choose an ''alternative'' innovative technology to manage your hazardous waste at lower cost,
- Treater you might adopt a more cost effective treatment process, and
- Innovative technology developer you might now have a way to further develop, refine, or market your technology.

LDRite therefore has the potential to provide a platform from which we can

[8] The legislative history accompanying the 1984 Hazardous Solid Waste Amendment (HSWA) to RCRA states that a hazardous waste treatment method should be ''the best that has been demonstrated to be achievable.'' It also notes that Congress' intent is ''to require utilization of available technology'' and not a ''process which contemplates technology-forcing standards'' (Vol. 130 Cong. Rec. S9178 (daily edition, July 25, 1984)). The evident intent is to base treatment standards on the best technologies commonly in use and thus reasonably available to any generator. LDR treatment standards are generally based on the performance of the ''best demonstrated available technology,'' or BDAT. This approach involves identifying applicable treatment systems for individual wastes or for groups of wastes; determining whether these systems are ''demonstrated'' to achieve acceptably low effluent contaminant concentrations; and, determining if they are ''available'' commercially. For more information on this process, see the Final Best Demonstrated Available Technology (BDAT) Document for Quality Assurance/Quality Control Procedures and Methodology, USEPA, October 23, 1991.

[9] Generally, we prefer to set concentration-based treatment standards rather than technology-based treatment standards. Concentration-based treatment standards potentially offer the regulated community greater flexibility when developing and implementing hazardous waste compliance strategies. To meet concentration-based standards, waste treaters may use any technology method to treat their hazardous waste, as long as they comply with the numerical treatment standard. When complying with technology-based treatment standards, however, treaters must treat the waste using the established technology. EPA intended the numeric-based standards to encourage development of innovative waste treatment technologies. We realize, however, that more incentives may be necessary.

[10] When determining applicable treatment technologies, wastes (i.e., waste streams or waste codes) may be clustered into so-called ''treatability'' groups that have similar parameters which affect treatment success. These parameters can include physical state, water content, presence of similar hazardous and nonhazardous contaminants, organic content, heat content, pH, etc. Information on the waste characteristics of the treatability group are used to determine the applicable treatment technologies. The term ''new'' refers to a waste stream that a BDAT technology did not treat when LDR treatment standards were originally developed. The term ''old'' refers to a waste stream that was originally treated by BDAT technology used to develop the standard.

establish a solid understanding and common path forward with many types of stakeholders.

C. What Should You Expect From LDRite?

We intend this preamble to lay out our LDRite objectives and also some potential avenues by which a greater use of innovative technologies in the RCRA waste treatment program could be achieved. We expect to engage in an open dialogue with technology developers, generators, treaters, disposers, federal and state agencies, and the public. We encourage you to comment on the objectives of LDRite, the suggestions and avenues that we identify below, and to add your ideas on how best to develop the LDRite project. We emphasize that, if our plans to move forward can be improved or even significantly redirected, we are willing to look closely at all suggestions in this regard. We hope to pool our thoughts and resources with yours, and to generate the most promising ways the LDR program and LDRite can encourage innovative technologies that protect the environment and that efficiently and economically manage hazardous waste.

In an attempt to jump start your thinking and to elicit the most meaningful comments on this ANPRM, we are identifying below some steps that could be taken in the near future. Again, we emphasize that these steps are open to full discussion and can be modified or changed by your comments. Currently, EPA is looking into:

• Developing a ''match-making'' database system for the Internet—This database would allow innovative technology developers an opportunity to present their technologies (*e.g.*, the type of waste the technology can treat, any available test data, etc.). Hazardous waste generators and treaters would also have a resource to research viable alternative treatment technologies using waste code and hazardous constituent information. One possibility is to expand an existing system, the Remediation and Characterization Innovative Technologies (REACH IT) database. The general vendor information provided for each technology could include:

Vendor name
Technology type
Trade name
Vendor address
Contact name and phone number
Patent and trademark information
Scale of technology (bench, pilot, or full)
The type of waste the technology could treat

• Linking current EPA technology advancement programs with innovative technology developers—These programs would help developers verify technology performance or finance technology development. Currently, the Environmental Technology Verification (ETV) program provides a mechanism for third-party verification of innovative technology performance. The Small Business Innovative Research (SBIR) program makes' awards to small firms for research and development of cutting-edge technologies.

Of course, our ultimate step would be to modify current LDR treatment standards to incorporate or encourage the use of innovative technologies. We expect the LDRite project to illuminate ways in which this could be done in an effective and efficient manner. This is particularly important because pursuing a rulemaking effort to change LDR regulatory standards for waste treatment is a resource-intensive and time-consuming endeavor that cannot be undertaken lightly, especially in this era of constrained resources.

D. What Shouldn't You Expect From LDRite?

We want to encourage development and promotion of innovative technology to meet environmental goals and standards. EPA cannot, however, commercially endorse specific technologies or promote specific companies even if they are acceptable or promising. Rather, we more appropriately set performance criteria and allow the regulated community flexibility in selecting among technologies.

E. How Will EPA Ensure That Innovative Technologies Are Environmentally Protective?

EPA's mission is to protect human health and the environment. We want to encourage innovative technologies that promote the most effective and efficient protection of the environment possible. If current treatment technologies provide the best possible hazardous waste management option, then we would have significant difficulty changing our current LDR treatment standards absent a corresponding and substantial benefit (perhaps promoting greater source reduction).

However, we want to keep pace with new technological advancements in the hazardous waste management field and to find opportunities to stimulate this field, whether they be regulatory or non-regulatory. One starting point, it would seem, is to make sure that technology developers understand how they could fit into the RCRA LDR regulatory development process. A clearly articulated and developer-friendly innovative technology evaluation process could help in this regard. As noted earlier, we will be examining how well other existing technology evaluation programs could serve the specific interest at issue here—keeping the RCRA LDR treatment program current with waste treatment technology development. On the other hand, we do not need to be constrained by the parameters of those programs, especially if they serve needs that differ from ours. For example, selecting a remediation technology for a particular site of contamination may present a different set of considerations than developing nationally applicable LDR treatment standards for a given set of hazardous constituents. We hope to be able to identify both areas of commonality with and areas of difference from other existing programs.

F. Will EPA Fund Innovative Technology Development Under LDRite?

The answer at this time is no. However, the following programs are designed to facilitate the development of new technologies in a variety of ways:

• The Environmental Technology Verification program (http://www.epa.gov/etv): ETV verifies the performance of commercial-ready technologies through the evaluation of objective and quality-assured data so that potential purchasers and permitters are provided with an independent and credible assessment of what they are buying and permitting. The ETV program is operated by EPA's Office of Research and Development and was created to substantially accelerate the entrance of environmental technologies into the domestic and international marketplace. EPA has selected ''verification partners'' to oversee and conduct the technology verification activities. These partners work with EPA technology experts and a variety of public and private stakeholders to develop procedures for verifying technology performance. For each technology verified, the partner develops a test plan, in conjunction with the developer, and the test is conducted by an independent third party. Following the test, a verification statement of 3–5 pages is issued by EPA, along with a data report.

• Small Business Innovative Research (http://www.epa.gov/ncerqa/sbir): For developers of technologies at the early stages of development and testing, EPA's SBIR program makes awards to small firms for research and development of cutting-edge technologies. The SBIR program is

intended to spawn commercial ventures that improve our environment and quality of life, create jobs, increase productivity and economic growth, and improve the international competitiveness of the U.S. technology industry. Over the past decade, dozens of innovative technologies and processes have emerged from this program. A number of these have moved quickly from ''proof of concept'' to commercialization. In other cases, companies are still seeking the start-up capital or other support needed to achieve commercialization of their technologies.

G. Request for Comment

We recognize that the current regulatory environment, including the LDR treatment standards, may create unintentional barriers to innovative technology development in the hazardous waste arena. We want to know how you perceive this. Please tell us what part(s) of the LDR program you think inhibit innovative technology development and use, and what new initiatives would be beneficial in light of the goals and objectives set out above. For instance, you should think about the following points in preparing your comments:

- How can EPA help encourage innovative technology development via the LDR program, particularly with respect to what technology developers do or don't understand about the LDR program and the BDAT process by which our technology-based standards are developed from actual performance data?
- Will a ''match-making'' database system on the Internet facilitate the use of innovative technologies, and if so, what technology data should be included?
- Which existing EPA programs (*e.g.,* ETV, SBIR) or parts of those programs would be useful in evaluating innovative technologies in the context of the LDR national treatment standards and of the BDAT concept that underlies these standards?
- Do technology developers have sufficiently detailed information on hazardous waste streams and the current cost of treatment to determine the most promising markets for new technologies? If not, what type of information is missing or hard to find for the developers?
- Are there ways, either formal or informal, in which we could better ensure that the hazardous waste treatment program evolves along with advancements in the hazardous waste treatment industry?
- How can the LDR program more effectively move up the hierarchy of hazardous waste management in conjunction with encouraging innovative technologies?

We encourage you to submit your insights on areas within the LDR program that can potentially serve as vehicles to encourage innovative technology development. Your input will help us adjust, as appropriate, certain aspects of our program to encourage innovative technologies.

If you have developed a technology that effectively reclaims, recycles, or treats regulated constituents in hazardous waste streams, please let us know. Information on your technology will keep us up-to-date on new treatment options. You might also want to examine technologies we have identified to treat specific waste streams in EPA's Treatment Technology Background Document, January 1991. This may help you to demonstrate how your technology outperforms a technology used to establish a current LDR treatment standard.

V. Issues Regarding the Effectiveness of Various Stabilization Practices Used to Immobilize Metal Wastes

A. Background on LDR Treatment Standard Program

1. How Have Treatment Standards Been Established?

The 1984 Hazardous and Solid Waste Amendments (HSWA) require that treatment standards must substantially diminish the toxicity or mobility of hazardous waste, so that short- and long-term threats to human health and the environment are minimized. (RCRA Section 3004(m)(1), 42 U.S.C. 6924(m)(1)). We interpret long-term threats to be the residual hazards of a waste that will continue even after treatment, disposal, and the ultimate capping of the filled landfill cell. With regard to metals, treatment should impart a lasting measure of immobility to the metals of concern.

Under EPA's LDR program, we have established treatment standards to implement the RCRA 3004(m) requirements. As mentioned in an earlier section of this notice, we have established two types of treatment standards: (1) a numerical concentration-based treatment limit for each constituent of concern, or (2) a method of treatment that must be used to treat a particular constituent or group of constituents. In either case, the treatment standard is based on a technology determined to be the ''Best Demonstrated Available Technology'' or BDAT.

2. What Improvements Have Been Made to the LDR Program?

''Our goal is to make the entire federal government both less expensive and more efficient * * * we intend to redesign, reinvent, to reinvigorate the entire national government. [11]

Over the last seven years, we have worked hard to find ways to improve the effectiveness of our work while still protecting human health and the environment. We believe that great strides have been made. One of our biggest LDR accomplishments has been the establishment of Universal Treatment Standards (UTS) (59 FR 47982, September 19, 1994). This effort greatly simplified both compliance and enforcement with the LDRs without sacrificing protection of the environment or human health. The rule replaced multiple concentration levels for the same constituent across the LDR treatment standards with a uniform set of levels for each constituent. Another improvement to the program was the creation of alternative treatment standards for debris contaminated with hazardous waste (57 FR 37221, August 18, 1992). These treatment standards were tailored to address the specific problems encountered when manufactured objects, plant or animal matter, or natural geologic material (*e.g.,* cobbles and boulders) become contaminated with a hazardous waste and are subsequently subject to LDR requirements.

However, our work is not done. We remain committed to making quality improvements that will further improve the overall effectiveness and efficiency of the LDR program. Last July, EPA began implementation of a new set of administrative reforms, known as the RCRA Cleanup Reforms. These reforms are designed to achieve faster, more efficient cleanups at RCRA sites that treat, store, or dispose of hazardous waste and that have the potential for environmental contamination. The reforms are our comprehensive effort to address the key impediments to cleanups, maximize program flexibility, and spur progress toward a set of ambitious national cleanup goals.

We are committed to ensuring that the LDR program incorporates these goals within its regulatory and policy framework. We have identified areas that need to be examined more carefully and we are working towards finding solutions to areas that may affect the accelerated and effective cleanups at corrective action sites. Progress has already been made. Early on we realized

[11] President Bill Clinton's remarks announcing the National Performance Review, March 3, 1993.

that the treatment standards promulgated for as-generated waste would not always be achievable or appropriate for soil contaminated with hazardous waste and that the development of less stringent treatment standards was needed (59 FR 47980, September 19, 1994). In May 1998, we promulgated alternative treatment standards for contaminated soils subject to LDR. (See 63 FR 28556, May 26, 1998). The alternative soil standards provide the flexibility needed for achieving our cleanup goals. In the future, any additional revisions to the LDR program must be evaluated thoroughly to ensure that protection of human health and the environment is maintained and that efforts to facilitate cleanups are not compromised.

B. Background on Treatment Standards for Metal-Bearing Hazardous Waste

1. What Are the Metal-Bearing Wastes We Regulate in the LDR Program?

In EPA's LDR program, we regulate two different types of metal-bearing wastes: ''listed'' wastes with metals as regulated constituents; and ''characteristic'' metal wastes, which are regulated because they contain significant concentrations of mobile metal(s).[12]

Listed metal-bearing wastes are identified with a U, P, F, or K designation *and* contain one or more of the 14 metal constituents of concern identified in 40 CFR 268.40. Regulated metal constituents of concern are antimony, arsenic, barium, beryllium, cadmium, chromium, lead, mercury, nickel, selenium, silver, thallium, vanadium, and zinc.[13]

Characteristic metal wastes, identified as D004–D011, are defined as characteristic because the concentration of the toxic metal in the waste equals or exceeds a specified leachate concentration that is known to be a threat to human health and the environment. For example, a waste designated as ''D008'' is a waste which leaches lead at a concentration of 5 mg/L or greater using the Toxicity Characteristic Leaching Procedure (TCLP). The other RCRA characteristic metals are arsenic (D004), barium (D005), cadmium (D006), chromium (D007), mercury (D009), selenium (D010), and silver (D011). Since May 1990, characteristic metal wastes have had to undergo some type of treatment prior to land disposal.[14]

2. How Were the Treatment Standards for Metals Established?

For metal-bearing wastes, we developed numerical, concentration-based treatment standards based on performance data from two BDAT technologies: High temperature metals recovery (HTMR) and stabilization.[15] We compared the performance of the two technologies and promulgated numerical treatment standards based on the higher of the calculated treatment standards to allow for waste variability and detection limit difficulties (63 FR 28561, May 26, 1998). By setting a standard as a numerical concentration limit, as opposed to a method of treatment, any type of treatment technology other than impermissible dilution can be used to achieve the standard (40 CFR 268.3).

Please note that the discussion in this part of the notice refers primarily to as-generated process waste. A specific discussion of how this issue may or may not relate to the alternative treatment standards for soil and debris is not presented, but we welcome comments on this subject.

3. Relevant Treatment-Related Definitions

As mentioned earlier, an array of treatment technologies are capable of immobilizing metals in hazardous waste. For regulatory purposes, however, the LDR program has only defined two immobilization technologies: stabilization and macroencapsulation.[16] Other technologies that perform immobilization functions are discussed in EPA's Treatment Technology Background Document[17] and the descriptions used in that document will be followed in today's discussion. Other practices, however, have not been defined to date by EPA. We discuss these practices today in narrative form with as much detail as possible to accurately describe the process.

The following terms are used in the notice. Definitions printed in italics are regulatory terms (in 40 CFR 260.10 or 40 CFR 268.42) while the terms in standard typeface are not. We encourage you to provide us with any changes to the non-regulatory terms you think would be helpful. We are not, however, taking comment on the regulatory terms at this time. Additionally, you may submit information on any terms that we have neglected to present.

Definitions of Selected Terms

Treatment—means any method, technique or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste, or so as to recover energy or material resources from the waste, or so as to render such waste non-hazardous, or less hazardous; safer to transport, store, or dispose of; or amenable for recovery, amenable for storage, or reduced in volume.

Immobilization—A broad class of technologies that reduces the solubility or leachability of the metal in the waste prior to land disposal. These technologies are designed to fix in place or position a metal constituent or constituents in a waste using physical, chemical or biological means so as to render such waste non-hazardous or less hazardous.

Encapsulation—A family of processes wherein high-solids nonwastewaters are mixed with an organic polymeric substance or with asphalt. Mixtures are

[12] If the metal concentration is high enough, the waste may be characteristically hazardous for that metal. See the characteristic levels in 40 CFR 261.24. If the waste is characteristic for other reasons (*e.g.,* organically toxic, corrosive, ignitable, or reactive) but not due to the metals, then a lesser concentration of metals may cause them to be subject to LDR standards as ''underlying hazardous constituents (UHCs).''

[13] A treatment standard for zinc has been established only for K061 waste. Zinc is not regulated in any other RCRA hazardous waste. Similarly, vanadium is a regulated constituent only in P119, P120,K171, and K172 wastes. Although zinc, vanadium, fluoride, and sulfide have UTS levels, they are not UHCs. However, EPA has required that some wastes meet UTS for these constituents because reaching these levels is additional evidence that treatment is effective.

[14] The Third Third Rule (55 FR 22520, June 1, 1990) required that characteristic metal wastes be treated to the characteristic level before disposal. Prior to that date, metal characteristic waste could be disposed in hazardous waste land disposal units without prior treatment. The recent Phase IV Rule (63 FR 28556, May 26, 1998) required that these same wastes now meet the more stringent UTS listed at 40 CFR 268.48 before land disposal.

[15] See '' Land Disposal Restrictions For Third Third Scheduled Wastes: Final Rule,'' 55 FR 22520, June 1, 1990; ''Land Disposal Restrictions Phase II—Universal Treatment Standards, and Treatment Standards for Organic Toxicity Characteristic Wastes and Newly Listed Wastes: Final Rule,'' 59 FR 47980, September 19, 1994; and ''Land Disposal Restrictions Phase IV: Final Rule Promulgating Treatment Standards for Metal Wastes and Mineral Processing Wastes; Mineral Processing Secondary Materials and Bevill Exclusion Issues; Treatment Standards for Hazardous Soils, and Exclusion of Recycled Wood Preserving Wastewaters: Final Rule,'' 63 FR 28556, May 26, 1998.

[16] Regulatory definitions for stabilization and macroencapsulation (40 CFR 268.42) have been developed as part of the LDR program because for some RCRA hazardous waste codes a method of treatment has been set as the treatment standard. When a method of treatment is set, one must use the treatment defined in 40 CFR 268.42. However, if a numerical concentration-based treatment standard has been set, compliance with this standard can be achieved using any type of treatment other than impermissible dilution as defined in 40 CFR 268.3.

[17] The Treatment Technology Background Document, USEPA, January 1991 can be found in the RCRA docket supporting this rule.

then allowed to cure into a solid mass prior to disposal.

Macroencapsulation—Macroencapsulation with surface coating materials such as polymeric organics (*e.g.,* resins and plastics) or with a jacket of inert inorganic materials to substantially reduce surface exposure to potential leaching media. Macroencapsulation specifically does not include any material that would be classified as a tank or container according to 40 CFR 260.10.

Neutralization—Means treatment with the following reagents (or waste reagents) or combinations of reagents: (1) Acids; (2) bases; or (3) water (including wastewaters) resulting in a pH greater than 2 but less than 12.5 as measured in the aqueous residuals.

Precipitation—Chemical precipitation of metals or other inorganics as insoluble precipitates of oxides, hydroxides, carbonates, sulfides, sulfates, chlorides, fluorides, or phosphates. The following reagents (or waste reagents) are typically used alone or in combination: (1) Lime (*i.e.,* containing oxides and/or hydroxides of calcium and/or magnesium); (2) caustic (*i.e.,* sodium and/or potassium hydroxides); (3) soda ash (*i.e.,* sodium carbonate); (4) sodium sulfide; (5) ferric sulfate or ferric chloride; (6) alum; or (7) sodium sulfate. Additional floculating, coagulation or similar reagents/processes that enhance sludge dewatering characteristics are not precluded from use.

Solidification—Techniques that encapsulate the waste, forming a solid material of high structural integrity, and does not necessarily involve a chemical interaction between the contaminants and the solidifying additives.

Stabilization—Stabilization with the following reagents (or waste reagents) or combination of reagents: (1) Portland cement; or (2) lime/pozzolans (*e.g.,* fly ash and cement kiln dust)—this does not preclude the addition of reagents (*e.g.,* iron salts, silicates, and clays) designed to enhance the set/cure time and/or compressive strength, or to overall reduce the leachability of the metal or inorganic.

Vitrification—A process involving the dissolution of waste at high temperatures with hazardous constituents incorporated into a glass or a glass-like matrix.

C. Our Questions About the Metal Treatment Standards

Even though metals are land disposed within current regulatory requirements, their toxic properties make it imperative that they remain immobilized long after disposal, even after current land disposal cells have long ceased operation. Long-term stability of metal constituents in a land disposal environment is therefore a primary objective when determining the type of immobilization technology to be used.

Our goals in this notice are to scrutinize specific immobilization activities as they pertain to metal bearing wastes, and also to:

(1) Gather additional information on techniques currently being used to immobilize metals in both listed and characteristic wastes;

(2) Identify additional cost-effective ways, if any, beyond current compliance testing by which both short-term and long-term effectiveness of immobilized waste can be assured; and

(3) Solicit comment, information, and data on the observations, issues, and questions we present in this notice. In particular, we would like comments on alternative approaches to evaluating the effectiveness of treatment by immobilization technologies. We would also like comment on the amount of immobilization of metal-contaminated soils that takes place at corrective action sites and whether the points raised in this notice could adversely effect current efforts to encourage and facilitate cleanups.

D. Current Treatment Processes Used for the Immobilization of Metal Waste

1. Categories of Treatment Processes Used to Meet the Standards for Metal Wastes

In meeting the numerical treatment standards, facilities generally employ two different categories of treatment processes for hazardous wastes containing metals: (1) Removal technologies that separate and recover metals contained in the hazardous waste for some type of reuse; and (2) Immobilization technologies that physically or chemically reduce the solubility or leachability of metals in the hazardous waste prior to land disposal.

Removal technologies include treatments such as acid leaching, filtration, high temperature metals recovery (HTMR), ion exchange, and retorting. These technologies are generally conducted on wastes with metal concentrations greater than 1%. The choice of any one of these removal technologies is governed by the properties of the metal to be recovered as well as the actual physical and chemical characteristics of the waste itself.[18] All of these technologies can be highly effective in the recovery of metals when properly applied.

Immobilization technologies are those technologies that reduce the solubility or leachability of the metal in the waste prior to land disposal. They do not remove the metal from the waste. Immobilization technologies typically promote physical and/or chemical changes within the waste to render the metals significantly less mobile and more resistant to leaching. Vitrification, macroencapsulation, and stabilization are examples of immobilization technologies. Usually, a metal-containing waste is treated with one of these technologies when the metal cannot be recovered or the concentration of the metal in the waste is too low to use a removal technology. In certain situations, however, the application of a removal technology can also require additional treatment of the residual (*e.g.,* slag generated from high temperature metals recovery) by some type of immobilization. This type of immobilization is also the subject of this notice.

2. Immobilization

As discussed above, immobilization is defined as a broad class of treatment methods designed to fix in place or position metal constituent(s) in a waste. To ensure treatment of a regulated constituent, any immobilization practice must impart a physical, chemical, or biological change to the metal or waste to render the waste non-hazardous or less hazardous. A variety of treatment technologies fall within the category of immobilization and are applicable to metal waste treatment.

Analyses conducted for the LDR Phase IV rule suggest that treatment with cement or lime/pozzolans as well as other reagents (*i.e.,* ''stabilization'' as defined in 40 CFR 268.42) is the primary method of immobilization for the treatment of metal-bearing wastes.[19] In the Phase IV final rule (63 FR 28556, May 26, 1998), we identified stabilization as the BDAT for metal wastes, and it is therefore the basis (along with HTMR) of our current numerical treatment standards for metals.

3. Details on Stabilization

The basic principle of stabilization is that leachable metals in a waste are immobilized. For stabilization, this occurs following the addition of reagents, such as Portland cement, and other chemicals. Metal leachability is

[18] Of course, a facility's individual choice of removal over immobilization will also involve non-technical considerations, such as economics.

[19] See the capacity and economic analyses for the Phase IV metal treatment standards which can be found in the Phase IV final rule docket (docket number F–98–2P4F–FFFFF).

reduced by the formation of a lattice structure and chemical bonds that bind the metals in the solid matrix, and thereby limit the amount of metal constituents that can be leached when water or a mild acid solution comes into contact with the treated waste material. Stabilization is most effective when the waste metal is in its least soluble state, thereby decreasing the potential for leaching. Pretreatment may be required to chemically reduce or oxidize the metal to a lower solubility state and achieve maximum stabilization performance. For example, hexavalent chromium is much more soluble and more difficult to stabilize than trivalent chromium.

The two principal stabilization processes used are cement-based and lime/pozzolan-based processes. Stabilization processes can be modified through the use of additives, such as silicates, that control curing rates, reduce permeability, and enhance the immobilization properties of the solid material. Portland cement is a mixture of powdered oxides of calcium, silica, aluminum and iron produced by kiln burning of material rich in calcium and silica at high temperatures (*i.e.,* 1400–1500°C). When the anhydrous powder is mixed with water, hydration occurs and the cement begins to set. The chemistry involved is complex because many different reactions occur depending on the composition of the cement mixture.

As the cement begins to set, a colloidal gel of indefinite composition and structure is formed. Over time, the gel swells and forms a matrix composed of thin, interlacing, densely packed silicate fibrils. Constituents present in the waste (*e.g.,* dissolved metals and hydroxides and carbonates of various metals) are incorporated into the interstices of the cement matrix. The high pH of the cement mixture (*i.e.,* pH of 9–12) can keep some metals in the form of insoluble hydroxide and carbonate salts. It has been hypothesized that metal ions may also be incorporated into the crystal structure of the cement matrix. Oxoanionic metals (metals that form negative ions with oxygen), like arsenic and selenium, and divalent metals, like lead and cadmium, may not be as insoluble at high pHs.

Pozzolan, which contains finely divided, noncrystalline silica (*e.g.,* fly ash or components of cement kiln dust), is a material that is not itself cementitious, but becomes so upon the addition of lime. Metals in the waste are converted to insoluble silicates or hydroxides and are incorporated into interstices of the binder matrix, thereby inhibiting leaching.[20]

4. Determining What Type of Stabilization Is Appropriate

In determining whether a particular stabilization treatment will meet the LDR treatment standards, several technical and practical considerations are relevant. For example, the following waste properties influence whether stabilization will be appropriate and effective long-term treatment for a waste: (1) Concentration of fine particulates; (2) the concentration of oil and grease; (3) the concentration of organic compounds; (4) the concentration of oxidizing, halide, sulfate and chloride compounds; (5) the solubility of the metal compound(s); and (6) other waste matrix constituents.[21]

Equally important is an examination of the design and operation of the stabilization process itself. To determine the effectiveness of a particular stabilization process, the following parameters need to be assessed: (1) The amount and type of stabilizing agent and additives; (2) the degree of mixing; (3) the residence time; (4) the stabilization temperature and humidity; and (5) the form of the metal compound. Optimization of all these factors (and perhaps others) can be necessary for effective treatment to occur.

Because of these numerous technical and practical factors, it is obvious that effective metal stabilization is not a simple matter. Adding to this complexity are additional vagaries associated with the environmental conditions of the disposal site into which the stabilized metal matrix will be placed.[22] For these reasons, we think an inquiry into current field practices and metal waste disposal sites is warranted to determine whether our current regulations and industry's current compliance practices are still minimizing threats to human health and the environment by substantially diminishing the toxicity of the waste or substantially reducing the likelihood of migration of metal constituents from the waste.

E. Specific Metal Treatment Issues of Interest

1. Stabilization Reagents—Why Are They a Metal Treatment Issue?

The term stabilization is often used loosely in practice to refer to techniques that chemically reduce the hazard potential of a waste by converting the contaminants into less soluble, mobile, or toxic forms, either temporarily or permanently. The physical nature and handling characteristics of the waste are not necessarily changed. Some of these practices, while called stabilization, may not coincide with the concept of permanent treatment used by the Agency in the LDR program and discussed earlier in this notice.

Stabilization, as per our regulatory definition, is a distinct treatment process defined primarily by the use of Portland cement or lime/pozzolans under specific operational conditions. Conversely, the term stabilization, as more broadly used in practice, can encompass the use of myriad other reagents including lime, cement kiln dust, phosphates, clay, modified clays, sulfide, activated carbon, and ferrous sulfate that can be used individually or in combination. Such reagents are intended to chemically alter the speciation of the metals to decrease solubility or aid subsequent treatment steps. Issues may therefore arise regarding the performance of various practices nominally regarded by industry as stabilization.

For example, questions regarding actual chemical reactions occurring during treatment can emerge when long-term effectiveness is considered. In the Phase IV rule, the Agency codified the principle that the addition of iron metal in the form of fines, filings, or dust for the purpose of achieving a treatment standard for lead is ''impermissible dilution'' under 40 CFR 268.3(d) (63 FR 28566, May 26, 1998). We determined that this waste management practice, deemed stabilization by at least one industry, did not minimize threats posed by the land disposal of lead-containing hazardous waste. Specifically, we found that no chemical or pozzolanic reactions from the iron dust or filings occurred, and standard chemistry showed that metals, such as lead, were not bound into a non-leachable matrix when using iron dust or filings as a stabilizing agent. (See 63 FR 28566–69)

This instance, as well as other anecdotal information, has raised the issue of appropriate use of stabilization

[20] For additional information on immobilization technologies, see the Treatment Technology Background Document, USEPA, January 1991, which is in the docket supporting this notice. See also ''Solidification/Stabilization and its Application to Waste Materials,'' EPA/530/R–93/012, June 1993.

[21] See ''Handbook for Stabilization/Solidification of Hazardous Wastes,'' EPA/540–2–86/001, Table 2–7, June 1986.

[22] The environment of the disposal facility may affect the long-term immobilization of metals in stabilized waste (*e.g.,* the pH of the material in the disposal unit, buffering capacity, redox state, infiltration/rainfall rate, freeze/thaw potential.)

reagents in general. EPA is concerned that reliance may be currently placed on technologies that only temporarily immobilize the hazardous metals in as-generated waste through the addition of solubility-modifying or pH-adjusting chemicals, which may enable the treated waste to pass the TCLP compliance test *but* do not actually immobilize the metals over the long term. Consequently, the choice of reagent can raise a question as to whether the mandate established by HSWA of minimizing short-term and long-term threats to human health and the environment is being satisfied.

We therefore wish to inquire further about the use of reagents other than Portland cement and lime/pozzolans—such as phosphate- and silica-based reagents—and whether actual treatment occurs in a manner that in fact minimizes short-term and long-term threats to human health and the environment. It may well be that, upon closer scrutiny, use of these other reagents is, in fact, acceptable treatment for as-generated wastes under the LDR program. On the other hand, it is possible that, in some cases, the only effect of the reagent and stabilization process on the metal waste has been to show temporary immobility under the Agency's performance measure, the TCLP test conditions, prior to land disposal.

The Agency's hypothesis is that reagents used in immobilization technologies differ in their ability to provide effective long-term treatment of metals in the treated waste. We have the following questions:

- What is the extent of the difference in immobilization technologies?
- Do certain immobilization technologies and reagents lose their ability to immobilize metals after land disposal has occurred?
- Alternatively, does the Agency's treatment measure, the TCLP, differ from actual management conditions to the degree that metals are never effectively mobilized under disposal conditions?

Concerns about long-term stability and the waste's increase in volume also have been factors in past determinations of BDAT. For example, in the determination of the BDAT for arsenic wastes, volume increase, particularly with ferric co-precipitation, resulted in the selection of a different type of treatment technology as BDAT (55 FR 22552, June 1, 1990). Data obtained during the development of the standards demonstrated that significantly high reagent to waste ratios would be required to maintain arsenic stability under alkaline pH conditions.[23]

We also wish to raise another concern about the use of treatment reagents that may impact operations beyond just those associated with stabilization. Reagents can also be used in a variety of other treatment settings, for example, as metal precipitation agents for incinerator scrubber water. At least one reagent being used in this context is itself a hazardous constituent, dithiocarbamate. This may not be a matter of concern in some situations since the point of compliance with LDR treatment standards for any underlying hazardous constituent is at the point of placement on the land.

However, two scenarios may result in hazardous treatment reagents being placed on the land without being subject to testing for compliance with LDR standards. The first is when the reagent contains a hazardous constituent that is not identified as an underlying hazardous constituent in the original characteristic waste. The second is when the reagent contains a hazardous constituent that is not a regulated constituent for a listed waste.

Similar to the issue regarding stabilization reagents that is discussed above, we are inquiring whether the use of reagents containing hazardous constituents is consistent with the short-term and long-term protection of human health and the environment, at least when LDR compliance does not take into account the levels of those constituents that are being placed on the land. We, of course, recognize the engineering value that these constituents may provide in a waste treatment train. Thus, we are particularly interested in comment on the levels of total and leachable hazardous constituent reagents being placed on the land and whether additional attention to this issue is warranted from the standpoint of treatment efficacy and protection of human health and the environment.

2. What Is the Importance of Waste to Reagent and Water to Reagent Ratios During Metal Treatment?

Along with the selection of treatment reagents, the waste to reagent ratio is a critical performance parameter for effective stabilization to take place. Sufficient stabilizing material is necessary to facilitate the proper chemical reactions that allow for the binding of the waste constituents of concern (*i.e.,* metals) into a treated matrix, making them less susceptible to leaching. The ratio of water to stabilizing agent (including water in the waste) is also important, impacting the strength and permeability characteristics of the stabilized material. Too much water will cause low strength; too little will make mixing difficult and, most importantly, may not allow the chemical reactions that bind the metals to be fully completed.

We wish to inquire how reagent to waste ratios are being handled in practice during waste treatment operations. The use of excessive amounts of reagents (*i.e.,* over treatment) may not be an appropriate or effective waste management practice, either from a technical or an economic standpoint. Excessive use of reagents can also lead to questions of impermissible dilution, *i.e.,* whether concentration-based treatment standards are being met simply through physical dilution of the constituents, by the addition of inordinate amounts of reagent, in lieu of actual treatment involving chemical reactions between the reagent and the waste constituent. We request information on the waste to reagent ratios found in today's treatment operations in the field.

Similarly, the amount of water used to facilitate the reaction is equally important and is an area of our inquiry. Certain practices, apparently, forego the use of any water to initiate a chemical reaction between the reagents and the waste. Thus, prior to the TCLP compliance test, the chemical reaction between the reagents and the waste does not occur. By definition, regulatory treatment also has not occurred in this instance. We request information on how much water is typically used to facilitate stabilization reactions. We also request information on practices that do not use water at all prior to the compliance test.

3. How Well is Long-Term Immobilization Being Achieved?

Absent long-term studies on the stability of metal wastes in disposal units and in light of potential issues on the selection of reagents, we wish to inquire further about the long-term effectiveness and environmental benefits of certain immobilization technologies. The TCLP is the current compliance test, but this test was not specifically developed to be a performance measure of chemical precipitation procedures, of the long-term effectiveness of chemical additions, or of the potential for formation of toxic degradation products from added chelating agents. In

[23] Final Best Demonstrated Available Technology (BDAT) Background Document for K031, K084, K101, K102, Characteristic Arsenic Wastes (D004), P and U Wastes Containing Arsenic and Selenium listing Constituents, USEPA, May 1990, page 4–9.

addition, flocculating agents such as dithiocarbamates, which form toxic complexes (detrimental to aquatic ecosystems) and has the potential to degrade to toxic carbon disulfide, are not precluded from use by existing regulation. These situations need to be further studied and evaluated by the Agency particularly in respect to the long-term effectiveness of the various treatment methods.

As a preliminary step, we evaluated landfill leachate collection system data from 161 landfill cells operated by Waste Management, Inc. across the nation.[24] The Waste Management, Inc. landfills receive predominately hazardous wastes. However, some sites receive only sanitary wastes, or a combination of sanitary and industrial wastes. We also evaluated data from the Reynolds Metals Company's facility in Gum Springs, Arkansas and Envirosafe Services of Ohio's facility in Oregon, Ohio.

About 28% of the landfill cells from which we obtained data have actual leachate measurements in excess of the levels that would identify the leachates as characteristic hazardous wastes. Among the toxic metals, arsenic and cadmium have been most frequently observed at hazardous concentrations on both a total and dissolved constituent basis. In the long-term, these actual leachate concentrations suggest that significant groundwater contamination may result after the eventual failure of liners and other containment controls. Logic suggests that if compliance with the minimized threat standards were being achieved, leachate levels in excess of hazardous characteristic levels should not be observed in wastes that have met treatment standards before land disposal. However, actual disposal conditions may differ from those projected from the TCLP, and in part due to the influence of typical site-specific conditions.

At Envirosafe's industrial waste landfill, which accepts predominantly stabilized K061 waste, high arsenic, cadmium, and zinc leachate levels were found. Similarly, arsenic and fluoride were observed at significant levels and pH was quite high in the leachate from the Reynolds' monofill receiving treated K088 waste (although fluoride and cyanide levels are significantly lower than leachate levels from untreated K088 wastes).

Table 1 indicates the very limited and incomplete data currently in hand from these three sources. Although the TCLP is based on total metals analysis, we have provided both dissolved and total metal concentrations data in this table as reported in the data sources. Depending on how the metals analyses were conducted, total levels reported may not be directly comparable to the TCLP, as particulates may have been entrained in the samples. This could cause total metals analyses to show more metals than would leach if the tests were conducted in compliance with TCLP QA/QC protocols.

TABLE 1.—OBSERVATION OF LANDFILL LEACHATE PROPERTIES [a]

Parameter		Number of cells	Number of cells >TCLP	Percentage of Cells >TCLP	Maximum leachate concentration (mg/L)
pH		213	5 (>12.5)	2.8	13.1
			1 (<2.5)		1.81
Arsenic	Dissolved	80	9	11.3	120
	Total	152	29	19.1	1610
Barium	Dissolved	66	0	0	9.7
	Total	91	0	0	43.8
Cadmium	Dissolved	85	9	10.5	790
	Total	153	14	9.1	800
Chromium	Hexavalent	29	1	2.7	5.2
	Dissolved	73	2	3.4	9.1
	Total	161	12	7.5	102
Lead	Dissolved	84	1	1.2	8.9
	Total	125	5	4	72
Mercury	Dissolved	125	0	0	0.05
	Total	152	7	4.6	2.3
Selenium	Dissolved	90	1	1.1	12
	Total	157	6	3.8	5.2
Silver	Dissolved	79	0	0	0.05
	Total	120	0	0	0.42
Total Number of Individual cells with metals data.			46	[b] 28.2	

[a] Landfills operated by Waste Management, Inc. receive hazardous, sanitary, and mixtures of hazardous and sanitary wastes.
[b] Calculation based on 163 cells with some metals data.

A recent study published by researchers at California's Department of Toxic Substances Control [25] found that the leachate concentrations of metals that form oxoanionic species (*e.g.*, antimony, arsenic, molybdenum, selenium, and vanadium) in several leach tests (including the TCLP) did not always correlate closely with leachate concentrations obtained with actual municipal solid waste leachate (MSWL). For arsenic, molybdenum, and selenium the concentration levels in the leachate from the TCLP test were lower than the actual constituent concentrations found in the leachate extracted by the MSWL. For other metals, TCLP produced results approximately the same as the MSWL leachate results.

The Agency has initiated additional research focused on understanding the aspects of these tests (including the effects of pH and the chelating effects of the acetate and citrate used in the leach solutions) that can lead to over-or under prediction of results. In addition to our

[24] The data originally complied by Dr. Robert D. Gibbons of the University of Illinois at Chicago for Waste Management, Inc. is available in the docket for this notice.

[25] See Environmental Science & Technology, Vol. 32 No. 23, pp. 3825–3830, December 1, 1998.

own work, we wish to inquire further. We seek data and comment on metals in leachate from landfill cells, including the amounts of metal being disposed, the stabilization process used (and all key parameters such as reagent to waste ratios), and disposal conditions (*i.e.*, waste pH, landfill leachate pH, amount of water infiltration, and cap integrity). We would also like leachate metals data from groundwater wells downgradient of the landfills, and any data on groundwater pH and groundwater net alkalinity over time. To date, we have only limited information on the specific wastes and associated treatment for individual landfill cells.

F. Potential Changes Based on These Concerns

Below is a discussion of several approaches and areas in which we need additional information. We request comments on these approaches (individually or in combination) and data in support of your views, as well as any other information that addresses the issues and concerns identified in the preceding sections. Note that we are only asking for comments and information on these possible approaches, and that there are presently no plans to change the current LDR program as it pertains to metal treatment. If, however, proposed changes were to be developed, we would have to evaluate how any proposed changes would affect, if at all, the alternative treatment standards for soil and debris. Also, note that the primary focus of this notice is on as-generated process waste. We do, however, encourage comments on how any of these approaches could possibly affect the rapid cleanup of RCRA corrective action sites and CERCLA sites.

1. Restricted Disposal

Heavy metals are generally toxic and certain metals (*i.e.*, arsenic, selenium, and mercury) can be chemically altered (*e.g.*, methylated by bacteria) into even more toxic and mobile species. To help insure the long-term immobility of metals, control of disposal conditions for the treated waste is an avenue to explore. Current regulations allow characteristic metal wastes to be disposed in nonhazardous waste landfills once the characteristic constituent(s), and any UHCs, meet UTS (40 CFR 268.40 and 40 CFR 268.44).[26] To ensure disposal in more controlled conditions, one approach would be to confine disposal of these metal-bearing wastes to Subtitle C hazardous waste units, although, as just noted, this would significantly alter current rules regarding disposal of decharacterized waste.

Furthermore, it may be appropriate to consider the pH of the waste and the landfill. It may be necessary to prohibit the disposal of a waste if it would cause the mobilization of hazardous constituents in the wastes that were previously disposed in the landfill. It may also be necessary to prohibit such a waste if the existing landfill conditions may cause the waste's toxic constituents to be mobilized. For example, mercury sulfide has been shown to be mobilized in the presence of excess sulfides in alkaline conditions.[27] To maintain the long-term stability of these wastes, wastes that could create such conditions would have to be excluded from the disposal site, and the waste itself may have to be further treated to remove excess sulfides from the waste.

2. Specified Treatment Technologies

Another approach could be a limitation of allowable treatment technologies for metal-bearing wastes. By specifying more definitively the types of treatment allowed for metal as-generated wastes, we would no longer have concentration-based numerical treatment standards but specified methods of treatment. For example, if a treatment standard were based on stabilization using Portland cement as BDAT, we would specify that this is the only treatment reagent and process that could be used. The Agency is hesitant to implement this type of option, as we prefer to retain numerical, concentration-based standards.

Retention of a performance-based approach, however, may require the development of additional testing requirements and land disposal standards based on these new tests if we conclude that long-term effectiveness of stabilization is not being achieved under current industry practices. Potentially, performance criteria could also be required to demonstrate adequate treatment by a specified technology.

3. pH Controls

To achieve long-term stability and immobility of metal-bearing wastes, extreme pH conditions must be avoided. In certain situations, extremely alkaline wastes have not provided long-term treatment, but provided the appearance of treatment during compliance testing with the TCLP. In another example, arsenate species must be maintained between pH 3.0 and pH 8.0 under oxidizing conditions or arsenic species will be mobile in groundwater.[28] Therefore, if arsenic-bearing materials are disposed with materials or reagents that are highly alkaline or acidic, then the potential for groundwater contamination would be greatly enhanced. Maintaining metal-bearing waste residuals between a pH 5.0 and pH 8.0 would help maintain immobility of such arsenic-bearing wastes, but may be unsuitable for other wastes.

4. Demonstration of Waste Stability Over a pH Range

Current regulations only require that wastes be tested under one set of conditions. Because of the range of conditions that exist in landfill cells, a demonstration at a number of pH values covering the expected range of conditions could be required. Protocols may be developed that determine analyte solubility over the pH range. Compliance could be based in part on the solubility curve obtained from four parallel extractions using deionized water with nitric acid or sodium hydroxide. The extraction conditions could be as proposed by one group of researchers:[29]

At a liquid to solids ratio of 5

- If natural pH<5, then pH = 7, 9;
- If natural pH is between 5 and 9, then pH = 5, 7, 9;
- Extraction at natural pH.
- At a liquid to solids ratio of 0.5
- If natural pH>9, then pH = 5, 7, natural.

More pH conditions could also be required for the construction of the apparent solubility curve as a function of pH, or extrapolated for each constituent using the above procedure. Mobility in the expected pH range of disposal above numerical limits could be prohibited. Again, we seek comment and data on the viability of such an option.

G. Request for Comment

We desire long-term data for wastes treated by various technologies. We prefer actual field performance data, but we may be able to use bench

[26] Note that, even if these wastes no longer exhibit a characteristic, they cannot be land disposed anywhere until they satisfy LDR requirements. *Chemical Waste Management* v. *EPA,* 976 F.2d 2 (D.C. Cir. 1992).

[27] H. Lawrence Clever, Susan A. Johnson, and M. Elizabeth Derrick, The Solubility of Mercury and Some Sparingly Soluble Mercury Salts in Water and Aqueous Electrolyte Solutions, J. Phys. Chem. Ref. Data, Vol. 14, No. 3, 1985, page 652.

[28] Arsenic-Chemical Behavior and Treatment, David B. Vance. Can be found in the docket to today's notice and at http://flash.net/~nm2the4/arsenicart.htm.

[29] Leaching Test Protocols; David Kosson, Andrew Garrabrants, Florence Sanchez, and Urshila Gulgule, Rutgers University, March 1999. Can be found in the docket to today's notice.

performance data, with initial and later characterization with standard leach protocols.

We specifically request data from the landfill operators, including leachate collection system metal concentrations and pH, process descriptions, and associated treatability/performance testing data. As with any data submittal to EPA, well-documented Quality Assurance/Quality Control (QA/QC) is critical to the Agency in evaluating and assessing the credibility of the data.

We also seek your comments on the potential actions discussed herein that we could take to ensure that stabilization and immobilization practices are properly used to treat metal wastes. We want to make sure that threats to human health and the environment are minimized by the long-term stability and immobilization of metals in RCRA hazardous waste.

VI. Re-examination of the Spent Solvent (F001–F005) Treatment Standards

A. What is EPA Considering With Respect to the Treatment Standards for Spent Solvents?

The classification of waste as an F001–F005 spent solvent waste is based upon two criteria: The concentration of the solvent in the virgin solvent mixture, and how the solvent is used. The virgin solvent must have been comprised of any solvent mixture or blend which contains at least, in total, 10% by volume of one or more listed solvents. See the F001–F005 listing descriptions (40 CFR 261.31). Also, the solvent must be ''spent'' and have been used for its ''solvent'' properties. A solvent is considered ''spent'' when it ''has been used and as a result of contamination can no longer serve the purpose for which it was produced without further processing.'' [30]

In this section, we are revisiting the LDR treatment standards applicable to F001–F005 spent solvents to investigate whether we should require treatment of some (*i.e.,* metals) or all hazardous constituents to their universal treatment standards (UTS) before land disposal. This section includes spent solvent characterization information, a discussion of the current solvent treatment standards, and a description of one option for revising the spent solvent regulations. A second related inquiry, which we discuss in another section of this ANPRM, is to add an F040 incinerator ash waste code with corresponding treatment standards. This ash code would presumably address the underlying hazardous constituents in the treatment residuals from the incineration of spent solvents.

B. Why Is There a Need To Reexamine the Spent Solvent Treatment Standards?

When we established the treatment standards for listed solvent wastes in 1986, we did not also adopt treatment standards for metals or other hazardous constituents (*e.g.*, organics other than those listed in the Table in 40 CFR 268.40). Therefore, under the current regulations, if a listed solvent waste is not also characteristic (*i.e.*, the waste is not classified as any of the waste codes D001-D043), then treaters only have to treat the regulated constituents specified in the LDR table in 40 CFR 268.40. This means that they do not have to treat other hazardous constituents to the UTS levels set forth in the 40 CFR 268.48 UTS table. Thus, the potential exists for some solvent wastes that contain other hazardous constituents above UTS to be treated only for the organics listed in the LDR table in 40 CFR 268.40. The treatment residuals would then be land disposed with these other hazardous constituents still above UTS. Note that a waste that exhibits a characteristic must be treated for underlying hazardous constituents (UHCs) prior to land disposal, so this same potential does not exist for listed spent solvents that are also characteristic wastes.[31]

EPA typically does not require treatment of other hazardous constituents in listed wastes because in the listing and in the development of the treatment standards we have determined all of the hazardous constituents which are likely to be present.[32] In these investigations, however, we have not accounted for the fact that solvents can mobilize, and therefore become contaminated with, significant concentrations of the other hazardous constituents they contact. Therefore, we are investigating whether we need to regulate metals and other hazardous constituents in F001–F005 spent solvent wastes to better protect human health and the environment.

C. How Does EPA Regulate Spent Solvents?

Spent solvents are listed hazardous wastes carrying the waste codes F001–F005. Thirty-two solvents are listed in the table in 40 CFR 268.40. Thirty of these solvents have numerical treatment standards for the solvent itself; the other two, 2-Nitropropane and 2-Ethoxyethanol, have specified treatment technologies.

Currently, an F001–F005 waste is required to be treated for UHCs only if the waste is characteristic. As noted above, if the solvent waste is not characteristic, then it may be disposed with other hazardous constituents above UTS levels and still be in compliance with the LDR regulations. Two scenarios exist where a spent solvent may have a hazardous constituent above a concentration of concern to EPA (in both scenarios, assume that the waste does not exhibit a characteristic):

(1) The constituent is a toxicity characteristic (TC) metal or organic, and concentration is less than TC level, but above UTS.

(2) The constituent is not a TC metal or organic, but concentration is above UTS.

D. What Are the Characteristics of Spent Solvents and How Do Generators and Treaters Manage Them?

Nonwastewater spent solvents are usually either organic liquids or still bottoms from the recovery of F001–F005 spent solvents. The main technology for effectively treating the solvents is some form of combustion. Treaters must then ensure (typically via testing) that the incinerator ash complies with the treatment standards for the regulated solvent constituents in 40 CFR 268.40. If the ash is itself characteristic, most likely for metals, it is regarded as a newly-generated waste and must be further treated to meet not only the treatment standard for the characteristic but also the UTS levels for any UHCs that are present.

Nonwastewaters can also be derived from treating F001–F005 wastewaters. These nonwastewaters will typically be a sludge that could have concentrated levels of metals, and therefore exhibit a characteristic. If the nonwastewater does exhibit a characteristic, that characteristic, and any UHCs, must be treated.

Wastewater forms of F001–F005 are also generated. Most wastewaters are ''derived-from'' (*i.e.,* they are generated

[30] See the Memo from Michael Shapiro, USEPA, to the Hazardous Waste Management Division Directors, USEPA Regions I-X, March 24, 1994, for further clarification on the definition of spent material.

[31] If a waste is both listed and characteristic, and one of the regulated constituents in the listing is also the basis for the characteristic, 40 CFR 268.9(b) states that the listed waste code will operate in lieu of the standard for the characteristic provided the treatment standard for the listed waste includes a treatment standard for the constituent that causes the waste to exhibit the characteristic. Otherwise, the waste must meet the treatment standards for all applicable listed and characteristic codes. For example, consider a K100 waste with cadmium and chromium at levels above UTS but below characteristic levels, and lead above characteristic level. This waste would be classified as both K100 and D008. Since K100 is listed for cadmium, chromium, and lead, these three constituents must be treated to UTS. However, none of the other UHCs that may be present need to be treated to UTS.

[32] See the analyses in the BDAT Background Documents for each listed waste.

from the treatment, storage or disposal of listed hazardous wastes, and therefore remain hazardous wastes). See 40 CFR 261.3(c)(2). Examples include wastewaters contaminated with an F001–F005 solvent, scrubber waters from combustion units, and cooling waters from distillation units or strippers that get contaminated with solvents. Since most wastewaters are eventually co-mingled with other plant wastewaters, it is likely that other waste codes (and treatment standards) also apply. However, because many wastewaters are treated and discharged under National Pollutant Discharge Elimination System (NPDES) permits with no land disposal in the treatment train, the LDRs never apply to them (*i.e.*, they are restricted wastes, but not prohibited wastes, since they are not land disposed).

E. What Are the Levels of Metal Constituents in F001–F005?

The ''Best Demonstrated Available Technology (BDAT) Background Document for F001–F005 Spent Solvents,'' November 1986, presents nine data sets on incinerator ash from the combustion of hazardous wastes, including spent solvents. The data show that metal concentrations in the incinerator ash are mostly below UTS levels. There are no instances in which the metal concentration is above the TC level, and only two cases in which the metal concentration is above the UTS but below TC levels. One of these two instances is for lead and the other is for chromium.

Although this background document suggests that metals are not ubiquitous in treated wastes that contain spent solvents, more current information from the 1995 Biennial Reporting System (BRS) shows that often an F001–F005 waste stream is also characteristic for one of the metals. A preliminary review of the 1995 BRS shows that about 20% of the F001–F005 waste streams also carry at least one of the characteristic metal codes (*i.e.*, D004–D011), with about 15% carrying two or more characteristic metal codes. Lead and chromium are the metals that are most frequently present; each is found in about 15% of the spent solvent waste streams.

This information is informative but not necessarily dispositive. Although the BRS provides a general idea of how much hazardous waste is generated, we want to point out three issues with respect to the F001–F005 BRS data. One is that the BRS does not include actual metal concentrations in the waste streams, even though the waste streams are reported as characteristic for metal. Thus, it is very difficult to accurately estimate the range of metal concentrations found in spent solvent wastes, except through making assumptions that may or may not reflect reality. Nevertheless, because these data show that about 20% are reported as characteristic for metals, one could draw an inference that metals are present in these and potentially other spent solvent waste streams at levels that warrant further investigation.

A second issue is that the BRS does not provide any information on other recognized toxic metals that, by themselves, would not render a spent solvent characteristic. These metals include antimony, beryllium, nickel, and thallium, each of which appear on the list of hazardous constituents in Appendix VIII of Part 261. Thus, we cannot estimate from the BRS the extent that these metals may be present or in what concentrations.

Finally, although 20% of the spent solvents waste streams also have a characteristic metal code (and therefore require treatment of all UHCs reasonably expected to be present), we do not know the metal concentrations in the other 80% of the waste streams. This raises at least the potential for these streams to have metal concentrations above UTS. For all of these reasons, we are interested in a more complete characterization of metal constituents and concentrations in F001–F005 spent solvents and we invite data and detailed comments on this subject.

F. How Might We Change the Regulations?

Although the previous section focused solely on metals in spent solvents, we are more generally concerned about all hazardous constituents in spent solvents. As was alluded too earlier, solvent wastes are generated in a wide variety of settings and are prone to contamination with almost any hazardous constituent (depending upon where the solvents were used) since one of the main purposes of solvents is to mobilize whatever they come in contact with.

To ensure that all hazardous constituents in treated solvent wastes are at concentrations that reflect BDAT and minimize threats to human health and the environment, we are asking for comment on whether we should require treatment of all other hazardous constituents (or possibly just metals) in spent solvent wastes to UTS levels (see 40 CFR 268.48). This regulatory change would essentially adopt the same LDR regime for these listed solvent wastes as for characteristic wastes.

In extending this concept to F001–F005 spent solvents, we may need only to focus on metals since treatment via high temperature combustion would likely destroy all organics and the only remaining compounds of concern from the original spent solvent waste would be metals. However, as noted above, we are interested in comment on whether any technical or implementation considerations exist that would lead to requiring treatment of all hazardous constituents, not just metals, that are present in the F001–F005 wastes.

A second approach is to develop a new waste code (F040) for incinerator ash, and not to focus our attention on hazardous constituents in the original F001–F005 spent solvent waste that is going to high temperature combustion. We discuss the need for an ash waste code in this ANPRM in the section titled ''Should EPA Establish Special Categories of Waste Residuals?'' Since many solvent nonwastewaters are combusted, metal concentrations in spent solvents could be adequately controlled by the treatment standards for the ash waste code. As noted in this other section in more detail, we seek comment on the various advantages and disadvantages of this approach.

G. Request for Comment

We are seeking comment on all aspects of the potential changes to the F001–F005 waste codes. In particular, we would like comments and information on the following:

(1) F001–F005 characterization data, both before and after treatment (including total and TCLP metal concentrations);

(2) The need for a change to the current spent solvent regulations. What information can you provide on the current treatment practices for F001–F005 solvent wastes?

(3) If a change is necessary, which regulatory option do you prefer? We specifically invite comment on the option described in Section F, and on the addition of an F040 waste code for incinerator ash. Would treatment standards for the F040 waste code ensure that spent solvents are properly treated and disposed? We are also interested in other options you may prefer.

(4) What are the possible impacts of changing the regulations? Would there be a substantial increase/decrease in the amount of required sampling and analyses? Are there any capacity considerations that need to be analyzed?

VII. Reactive Wastes: Possible Revisions to Treatment Standards

A. What Is EPA's General Concern?

The LDR treatment standards for reactive wastes require that the waste no longer exhibit the characteristic of reactivity, but do not require destruction of the agents in the wastes that cause the waste to be reactive. Also, certain members of the regulated community have expressed uncertainty in how to evaluate wastes for reactivity, either before or after treatment, and have requested guidance. The Agency is therefore asking whether this type of guidance is generally needed and also whether the LDR treatment standards for these reactive wastes need to be revised to more effectively minimize long-term threats to human health and the environment.

B. What Are Reactive Wastes?

40 CFR 261.23 defines wastes having the characteristics of reactivity (classified as D003 wastes) as those that have any one of the following properties:

(1) It is normally unstable and readily undergoes violent change without detonating;

(2) It reacts violently with water;

(3) It forms potentially explosive mixtures with water;

(4) When mixed with water, it generates toxic gases, vapors or fumes in a quantity sufficient to present a danger to human health or the environment;

(5) It is a cyanide or sulfide bearing waste which, when exposed to pH conditions between 2 and 12.5, can generate toxic gases, vapors or fumes in a quantity sufficient to present a danger to human health or the environment;

(6) It is capable of detonation or explosive reaction if subjected to a strong initiating source or heated under confinement;

(7) It is readily capable of detonation, explosive decomposition or reaction at standard temperature and pressure;

(8) It is a forbidden explosive as defined in 49 CFR 173.51, a Class A explosive as defined in 49 CFR 173.53, or a Class B explosive as defined in 49 CFR 173.88.[33]

Several listed wastes are also considered reactive: K044, K045 and K047, wastes from the manufacture and processing of explosives. These wastes were listed solely for reactivity, and contain a number of explosive components which, if improperly managed, could pose a substantial hazard.[34]

C. What Are the Existing LDR Treatment Standards for Reactive Wastes?

The treatment standard for the reactive wastes, other than the cyanide subcategory wastes, is deactivation, abbreviated in the 40 CFR 268.40 treatment table as ''DEACT.'' DEACT requires only that the wastes must be treated to remove the characteristic prior to land disposal. The constituent that originally caused the waste to exhibit reactivity is not specifically required to be destroyed or separately treated. In addition to DEACT, explosives, water reactives, and other reactives subcategory D003 characteristic wastes must be treated to meet universal treatment standards (UTS) for any underlying hazardous constituents (UHCs) reasonably expected to be present in the waste.[35] See Table 2 for the list of the treatment standards.

TABLE 2.—TREATMENT STANDARDS FOR REACTIVE WASTES

Waste code	Waste description	Nonwastewater treatment standard
D003	reactive sulfides subcategory	DEACT.
	explosives subcategory	DEACT and meet 268.48 standards.
	unexploded ordnance and other explosive devices which have been the subject of an emergency response.	DEACT.
	other reactives subcategory	DEACT and meet 268.48 standards.
	water reactive subcategory	DEACT and meet 268.48 standards.
	reactive cyanides subcategory	590 mg/kg total, 30 mg/kg amenable.
K044	wastewater treatment sludges from the manufacturing and processing of explosives.	DEACT.
K045	spent carbon from the treatment of wastewater containing explosives.	DEACT.
K047	pink/red water from TNT operations	DEACT.

D. Are There Specific Reactive Subcategories That Merit Attention?

Yes. Several subcategories of reactive characteristic wastes appear in our LDR regulations. We are most interested in the waste subcategories that require only DEACT as the treatment standard. Two key issues exist in particular. First, where other, non-reactive hazardous constituents are expected to exist, these constituents may warrant individual treatment attention. Our current treatment standards do not always require this to occur. Table 2 illustrates how DEACT is specified for each subcategory of D003 wastes (with the exception of the reactive cyanides subcategory) and for K044, K045 and K047. UHCs or other hazardous constituents expected to be present (known as regulated constituents in listed wastes) are only included in the treatment standards for the following wastes: D003 explosives, other reactives, and water reactives subcategories.

Second, DEACT does not require treatment (destruction) of the constituent causing the waste to be reactive, but rather allows any method (including dilution in the case of Clean Water Act, or CWA, systems) to be used to remove the characteristic of reactivity. In the preamble to the Third Third Rule (55 FR 22552, June 1, 1990), EPA noted that it had selected deactivation because technologies exist that can remove the characteristic, and that the general standard would allow

[33] References to 49 CFR in 40 CFR 261.23 to explosive classes have been subsequently renamed and renumbered since the promulgation of 40 CFR 261.23. See 55 FR 52617, December 21, 1990. Definition of forbidden explosives is now found at 49 CFR 173.53, and definition of Class A and B explosives are found at 49 CFR 173.50. See also 49 CFR 173.53 to compare old and new hazard class names.

[34] Listing Background Document, USEPA, 1980, page 651, which is in the docket for this notice.

[35] When managed in CWA/CWA-equivalent/Class I SDWA systems, explosives, other reactives, and water reactive wastes may be diluted to remove the characteristic, without consideration of underlying constituents.

the regulated community flexibility to use whichever treatment technology that best fits the type of waste; see also *Chemical Waste Management* v. *EPA,* 976 F.2d 2, 18 (D.C. Cir. 1992), where the court upheld the deactivation standard for wastes identified because they exhibit the characteristic of reactivity.

Current regulations provide, at 40 CFR 268 Appendix VI, recommended technologies for the treatment of water reactive, reactive sulfide, explosive, other reactive subcategories of D003 characteristic wastes, and K044, K045 and K047 listed wastes. Again, these technologies are not required.

By not requiring a technology that destroys or permanently treats the characteristic causing the reactivity, we lack a means to measure whether a waste or waste constituent is still reactive over the long term. This becomes a concern, for example, when many of the listed and characteristic explosive subcategory reactive wastes are simply kept moist to make it safer to handle them. Because ''DEACT'' is narratively defined in section 261.23, wetting of material may be treatment in the short term, but is not necessarily a permanent treatment. The definition of ''DEACT'' has been implemented in practice to include wetting, even though it may be only temporarily effective. Furthermore, generators have in some cases determined that their wastes when wetted are not reactive and not subject to treatment standards even though explosive residues may form through evaporation. This raises the question about the timing of a determination of compliance (in this case, removal of a characteristic) with uncertain future events that may significantly change the nature of the waste.

E. Request for Comment

We are requesting comment on the possibility of modifying the treatment standards. One option would be to include a requirement to destroy the reactive constituents in the waste. Possible technologies include chemical oxidation (CHOXD); chemical reduction (CHRED); biodegradation (BIODG); or combustion (CMBST). These are some of the technologies recommended in 40 CFR 268 Appendix VI. We are also requesting comment on the possibility of adding the requirement to treat UHCs for the characteristic subcategories for which that requirement does not already exist and, in the case of the listed reactive wastes, to require treatment of specific hazardous metals which are also expected to be present.

We are also requesting data identifying the wastes, waste volumes, current treatment, and any additional treatment costs associated with alternative treatments that might better treat these wastes.

VIII. Public Input Into Decisions on Determinations of Equivalent Treatment (DETs)

At the 1998 LDR roundtable, we heard from environmental groups that we should allow the public to comment on Determinations of Equivalent Treatment (DET) granted under 40 CFR 268.42(b). The underlying concern is that the public has no voice in the decision making process that may have an impact on hazardous waste treatment in their own communities.

A. What Are DETs and What Is the Current System of Considering DET Petitions?

A DET is a variance that may be granted for a hazardous waste at a particular site for which the LDR treatment standard is a required method of treatment. It is based upon a demonstration to EPA that another treatment technology performs as well as the one required under the LDR treatment standard. If it is granted, the alternative technology becomes the treatment standard that must be used on that waste at a particular site.

Currently, the regulated community petitions EPA for a DET. These petitions generally contain data to show that the alternative treatment method provides a measure of performance equivalent to the one established as the treatment standard. These petitions also contain information on the facility generating the waste, the volume of the waste, where it is disposed, and other information relevant to the petition. We consider the petition and data, and then grant or deny the request in writing based upon its technical merits. We then inform the petitioner of our decision.

Under EPA's current regulations, public participation is not required in the process of evaluating a DET petition. In contrast, public participation is required for a related process involving treatment variances (see 40 CFR 268.44(e)). Under this process, we give public notice in the **Federal Register** of our intent to grant or deny the treatment variance and then again of our final decision. The treatability variances granted under 40 CFR 268.44(e) are very similar to DETs in that they establish alternative treatment standards for a waste. They differ from DETs in that they are granted in cases when the treatment standard is expressed as concentration levels rather than required methods of treatment, and the substantive grounds for granting treatment variances are different from those for DETs.

B. Is A Regulatory Change Needed?

We have recently begun publishing DETs in the **Federal Register** with a comment period without a regulatory change.[36] We are considering whether also to change the regulations at 40 CFR 268.42(b) to require EPA to seek public comment on most DET requests.[37] Public comment would be solicited on EPA's draft decision to grant or deny the DET request. Public comments could be solicited through such vehicles as the **Federal Register**, for instance, or other outlets such as local newspapers. We expect most comments would address the merits of the proposed technology for the waste in question. The comments received would then be factored into EPA's final decision. The written final decision could be announced in the **Federal Register** or other vehicle such as a local newspaper.

C. Request for Comment

We solicit comments on the need for a regulation regarding public participation in the DET process, and on whether EPA's current practice is sufficient. Furthermore, we solicit information on the length of time that would be appropriate for public participation, and the media vehicles that should be used to solicit comments. Is there a need for different public participation requirements than for treatment variances? Are there any disadvantages to the increased public participation, other than time delays for issuing the variance?

IX. Should EPA Revise the Macroencapsulation Alternative Treatment Standard for Hazardous Debris?

In a petition for rulemaking (available in the docket for this ANPRM), filed on December 16, 1998, the Environmental Technology Council (ETC), the National Association of Chemical Recyclers, and the Cement Kiln Recycling Coalition request EPA to amend the alternative treatment standards for hazardous debris to restrict the use of macroencapsulation for debris contaminated with significant amounts of organic hazardous constituents. ETC is particularly focused on the effectiveness of using high density

[36] See 64 FR 51540, September 23, 1999 for an example of a proposed DET in the **Federal Register**.

[37] EPA would reserve the option to waive this requirement if, in our judgement, delay would result in significant damage to human health and the environment.

polyethylene vaults for macroencapsulating hazardous debris.

A. What Are the Alternative Treatment Standards for Hazardous Debris?

On August 12, 1992, EPA promulgated alternative treatment standards for hazardous debris (57 FR 37195). Hazardous debris is defined as debris that either contains a listed hazardous waste, or exhibits a characteristic of hazardous waste (see 40 CFR 268.2(h)). The alternative treatment standards for hazardous debris are listed in the table at 40 CFR 268.45.

The 17 treatment technologies listed in 40 CFR 268.45 are divided into three categories: extraction, destruction, and immobilization. The extraction and destruction technologies are designed to separate the debris from its contaminant(s). Because debris treated by one of these types of technologies is considered clean, such debris can then be disposed of in a subtitle D landfill. The immobilization technologies do not separate the debris from its contaminants, and therefore debris treated using an immobilization technology must be disposed of in a subtitle C landfill.[38] The three immobilization technologies are macroencapsulation, microencapsulation, and sealing. Microencapsulation involves grinding up the debris and stabilizing it in a reagent. Sealing involves application of a coating material to the debris.

Macroencapsulation, the standard which is at issue, involves placing the debris in an inert jacket of material (such as a steel drum) to prevent leaching. If the macroencapsulation standard is used, the performance standard, which states that the encapsulating material must be resistant to degradation by the debris and any contaminants on the debris, must be met before the debris can be land disposed.

B. What is an HDPE Vault?

On June 15, 1995, three years after promulgation of the debris rule, Chemical Waste Management, Inc. (CWM) sent a letter to EPA in which they described their macroencapsulation process and asked whether it met the requirements of 40 CFR 268.45 (the letter and EPA's response are available in the docket for this ANPRM). CWM described their process as follows:

* * * a jacket of inert inorganic material is placed around hazardous debris, which is then placed in a high density polyethylene (HDPE) vault. An inert jacketing material (like cement) is then placed around the debris, the lid of the vault secured, and the vault is placed in a subtitle C landfill.

We had not considered this type of technology when developing the macroencapsulation standard. However, we determined in our response letter to CWM that this process meets the definition of macroencapsulation for hazardous debris. We also stated in our response that merely placing hazardous debris in a container, unless the container is made of a noncorroding material such as stainless steel, does not meet performance standard for macroencapsulation. We think that use of the cement (or other stabilizing material) is critical to meeting the design and operating standard for macroencapsulation. Without the stabilizing agent, no guarantee exists that the encapsulating material would be resistant to the debris contaminants.

C. What Is the Issue With the HDPE Vaults?

Because macroencapsulation is an immobilization technology, no removal or reduction of hazardous constituents is required. Therefore, debris placed into an HDPE vault could potentially have significant amounts of a contaminant.

The technical support document for the debris rule did not include a description of the HDPE vault as this method did not come to our attention until after the August 19, 1992 rule was published. The June 15, 1995 CWM letter did not include enough information that would have been required for a background document. Therefore, there has not been an extensive discussion about the effectiveness of the HDPE vaults. HDPE is a material that can be dissolved by even small amounts of solvents. The performance standard for macroencapsulation is clear in that the encapsulating material should be resistant to the debris and its contaminants. When hazardous debris contaminated with a significant amount of an organic solvent is placed in an HDPE vault, and if there is no stabilizing reagent, then theoretically the HDPE could dissolve from exposure to solvents. In this case, the performance standard for macroencapsulation has not been met. This is, in fact, improper treatment of a hazardous waste.

As pointed out in the ETC petition, the debris proposed rule (57 *FR* 958, January 9, 1992) originally stated that macroencapsulation was not appropriate for organic constituents. The technical support document for the proposed rule stated that macroencapsulation is not expected to be effective on organic compounds. The final debris rule may appear to some to be less restrictive than the proposal in that it does not contain the same prohibitive language. This is not the case. The table of alternative debris standards in the proposed rule was merely simplified for the final rule. ETC alleges in its petition that we did not place any contaminant restrictions on the macroencapsulation standard in the final rule as a result of the simplification of the table and that we meant to restrict macroencapsulation to inorganic debris only. This is also not true.

The response to comment's document for the final rule addresses the change in the alternative treatment standards table. We stated that the final rule did not prohibit encapsulation of any specific debris type because the design and operating parameters and the performance standards were sufficient to ensure effective treatment of hazardous debris using encapsulation. Basically, we regard the performance standards as thorough enough to prevent inappropriate treatment. The technical support document for the final rule mentions that certain situations, such as using organic polymer encapsulants to encase organic solvents, would obviously not meet the performance standard. We therefore find no compelling reason to propose a revision to the current macroencapsulation standard in today's notice. However, the use of HDPE vaults to macroencapsulate debris was not considered in the final rulemaking, and we are taking this opportunity to open the issue for comment.

D. Request for Comment

ETC is requesting that we amend the macroencapsulation standard to restrict it to ''metal-bearing hazardous waste'' only, and refer to the list of 43 listed and 8 characteristic wastes found in Appendix XI of 40 CFR 268. We are taking comment on this ETC option. We are also soliciting data on macroencapsulated debris and the effectiveness of HDPE vaults and any other options you may have.

We are also soliciting comment on restricting the use of the macroencapsulation standard for other types of wastes. Debris contaminated with a waste that has a specified method can be treated with one of the

[38] The exception to this is characteristic debris. If characteristic debris which has been immobilized no longer displays the characteristic, it can be disposed in a Subtitle D landfill.

alternative debris standards.[39] We are today taking comments on whether this is appropriate.

We are also considering restricting the use of the macroencapsulation standard for certain types of debris. Some debris types lend themselves to other alternative treatment technologies. Cloth contaminated with a hazardous organic substance, for instance, could be more effectively treated by combustion. We suspect that the macroencapsulation standard is used because it is easier and less costly, but this may not foster the most effective method of treatment. We had hoped that the macroencapsulation standard would be used only when other, more effective methods of treatment could not. We are today taking comment on whether the macroencapsulation standard should be restricted to just inorganic debris contaminated with inorganic constituents that cannot be otherwise treated. This is more restrictive than the ETC option.

X. Should EPA Establish a Special Category for Incineration Ash?

A. What Are We Considering for Incineration Ash?

Listed hazardous wastes carry the EPA hazardous waste codes of the as-generated waste from generation to ultimate land disposal. These waste codes are required to be placed on the LDR notification, which is the required LDR paperwork that accompanies the waste from the generator to the treatment, storage, or disposal facility and provides information about the waste so that the correct LDR treatment standards are met. In addition, some states require waste codes to be placed on the hazardous waste manifest, the RCRA tracking paperwork that accompanies hazardous wastes from generation to disposal. Facilities are also required to report information about their waste, including waste codes, to the Biennial Reporting System (BRS).

Because several listed hazardous wastes may be treated together in an incinerator or other incineration device, a large number of waste codes could be required on the LDR notification, the manifest, and reported to the BRS with respect to the thermal treatment residues (*i.e.,* the ash). We have heard from the regulated community that the tracking of multiple codes is burdensome and that a single waste code for incinerator ash would simplify paperwork and compliance monitoring. A single waste code could make it easier to track wastes on the manifest, especially in the event of a spill. A single waste code could also make completing the BRS much simpler, and could assist EPA in interpreting those BRS data. Therefore, we are considering establishing a waste code for incineration ash. It would likely be similar to the waste code established several years ago in the Third Third rule for multi-source leachate, F039 (55 FR 22619, June 1, 1990).

B. What Are the Approaches We Are Considering for Regulating Incineration Ash? [40]

Our initial thinking is that the incinerator ash waste code would encompass ash resulting from the incineration of more than one hazardous waste containing organic constituents, including organic toxicity wastes (D012–D043) and wastes with greater than 1% total organic carbon. The current definition of combustion, found in Table 1 at 40 CFR 268.42, includes high temperature organic destruction technologies in units such as incinerators, boilers, or industrial furnaces operated in accordance with the requirements of 40 CFR 264–265, Subparts O; or Part 266, Subpart H and potentially in other units operated in accordance with similar technical operating requirements (perhaps Subpart X). We solicit comments on whether an ash waste code should be for wastes that are incinerated, or whether ash from these other combustion units should thus be included. If we do include ash waste from such combustion devices, we solicit data on whether there are significant differences in the ash, and whether hazardous constituents partition into different types of residues, from these different incineration units. If differences do exist, should we regulate the ash from these different units accordingly? In addition, we solicit comments on whether the incineration ash waste code should be defined as the incineration of more than one hazardous waste containing organic constituents, including organic toxicity wastes (D012–D043) and wastes with greater than 1% total organic carbon, or whether it should be defined in some other way.

If we were to establish a new waste code for incinerator ash, the ash would almost certainly be considered a new point of generation since the incineration unit will significantly alter the physical and chemical composition of, and the hazards associated with, the original waste. This is not to say that the toxicity of the original wastes has been completely removed. Rather, the composition and nature of the waste have changed to the point that the hazards posed by the incinerator ash are likely to be significantly different than the original waste, and the subsequent management and handling that would be environmentally warranted for incinerator ash could be significantly different from those for the original waste.

Because hazardous constituents in incineration ash derive potentially from any of the hazardous wastes, our treatment standard should account for this possibility. One approach is to regulate all of the potential hazardous constituents that may be present. Subjecting the ash to the Universal Treatment Standards (UTS) would accomplish this goal. Under this approach, the ash would have to be evaluated for all UTS constituents, be treated if necessary to meet the UTS levels, and the resulting treatment residue would be placed in a hazardous waste (Subtitle C) landfill. Like the underlying philosophy for F039, however, it is unnecessary and wasteful to monitor constituents that are not present (55 FR 22620, June 1, 1990). Therefore, one modification to the approach outlined above would make the treater only responsible for meeting the treatment standards for those constituents specified in their permit waste analysis plan, which would be negotiated on a site-specific basis.

C. How Should the Dioxin Waste Codes Be Regulated?

One approach would be to exclude ash derived from listed dioxin-containing wastes F020–F023 and F026–F027 from any incineration ash code that we might develop. This would parallel the approach taken for F039, where dioxin-containing waste codes are not eligible for the more generic F039 classification. The ash would therefore continue to be classified and regulated as F020–F023 and F026–F027 wastes, the waste codes from which the ash is derived. Ash derived from soils contaminated with these waste codes would continue to be classified as F028. The reasoning behind continuing to

[39] For ''debris-like'' material with a specified method, such as K109, the specified method must be used.

[40] In the context of the Hazardous Waste Identification Rule (HWIR), the Chemical Manufacturers Association (CMA) suggested a different approach to regulating combustion ash. The CMA approach would exempt residues from the combustion of listed hazardous waste from the derived-from rule. The residues would then only be hazardous if they exhibit one of the hazardous waste characteristics of 40 CFR 261.3. We took comment on the CMA approach in the HWIR proposed rule (64 FR 63381, November 19, 1999). We will closely examine any comments we receive in response to that proposal, but we are not addressing nor soliciting additional comment on the CMA approach in this notice.

regulate the ash as a dioxin-containing waste code would be that these listed dioxin wastes are acutely hazardous and warrant special management standards (55 FR 22620, June 1, 1990). In addition, restrictions could be imposed that more explicitly prohibit mixing these dioxin wastes with other wastes to escape from more stringent management standards.

Another approach would be to allow these dioxin-containing waste codes to be eligible for the incinerator ash waste code. In looking at whether this approach can be justified, we would consider the potential for dioxin-listed waste in the feed stream to cause elevated dioxin levels in the incinerator bottom ash and collected particulate matter. Although the Agency's incinerator regulations minimize stack emissions of dioxins (see 64 FR 52528, September 30, 1999), the regulations do not explicitly minimize dioxin levels in bottom ash. There are no ash burn-out requirements, for example. However, dioxins are not thermally stable and, as a practical matter, dioxins in the waste feed are easily destroyed in an incinerator's combustion chamber. Therefore, dioxin levels in incinerator bottom ash from burning dioxin-listed waste should be no higher than dioxin levels in the ash from burning other non-dioxin wastes. To further evaluate this issue, we will need data on dioxin concentrations in ash from burning both dioxin-containing waste codes and from burning other non-dioxin wastes.

Similarly, our current incinerator regulations do not minimize dioxin levels in collected particulate matter. Because dioxins are so thermally unstable, it could be argued that waste particles entrained in the combustion gas are not likely to contain dioxins and that any dioxins found in the collected particulate matter result from post-combustion formation, which is not related to dioxin levels in the waste feed.

We are, therefore, interested in comment and data on whether the incineration of dioxin-containing waste cause either bottom ash or collected particulate matter to have higher levels of dioxin than the incineration of other non-dioxin wastes. Our decision on whether to propose to allow dioxin-containing waste codes to be eligible for an incinerator ash waste code (either with or without special management conditions) will be guided by the technical information we receive. We solicit comments on both approaches and on others that we should consider.

D. Should We Regulate Specific Constituents of Concern in the Ash?

One potential problem with establishing a new waste code for incinerator ash is that it may require treatment of constituents that are not in the as-generated waste at levels of concern, but are either formed in the ash (*e.g.,* dioxins) or concentrated in the ash (*e.g.,* metals) during treatment. Currently, constituents that are not identified as UHCs in the untreated characteristic waste and that form during treatment only have to be treated if it is determined that there is a new LDR point of generation after the treatment occurs. We clarified two LDR point of generation questions in a recent technical amendment (64 FR 25411, May 11, 1999). There, we said:

(1) For residuals that are the end product of a one-step treatment process or the end product of a treatment train, the treater has the obligation to ensure only that the original UHCs meet UTS standards and that the treatment residuals are not themselves characteristic. If a treatment residual in this scenario does not meet the treatment standards for the original characteristic (*i.e.,* when treatment is ineffective or incomplete) and requires further treatment, EPA does not consider the treatment residue to be newly generated for LDR purposes. Such a treatment residue, however, cannot be land disposed until it meets the treatment standard applicable to the original waste. This situation would normally involve retreating the waste residuals on-site. Any UHCs added or created by the treatment process are not required to be treated because there is no new point of generation for LDR purposes. However, as noted above, if the treatment residuals are themselves characteristic due to a new property (for example, an incinerator ash resulting from the incineration of several listed wastes is now only characteristic for D008 lead), then the treater must make a new determination of the UHCs present—either through knowledge or additional testing. This is the same obligation that attaches to any generator of a hazardous waste.

(2) For treatment residuals that appear only at intermediate steps of a treatment train, there is no obligation to determine UHCs or to determine whether the residual is itself characteristic. Intermediate-step treatment residuals are not newly generated hazardous wastes for LDR purposes. Thus, even when an intermediate treatment residual is sent off-site for further treatment (such as incinerator ash going offsite for stabilization and land filling), our current regulations at 40 CFR 268.7(b)(5) require only that the UHCs identified at the LDR point of generation be identified. There is no such requirement for any new UHCs that may be added or created during the preceding steps of the treatment process.

As indicated above, if we develop a separate waste code for incinerator ash and if the ash is considered a new LDR point of generation, full waste characterization of the ash would have to take place. Some constituents that were not UHCs in the characteristic wastes originally going into the incinerator could now be UHCs, particularly metals that are concentrated in the ash or, potentially, trace levels of dioxins and furans. We solicit comment and data on the concentration of metals or dioxins/furans in incineration ash and on the effect of establishing a waste code for incinerator ash. If we do not receive data, we may need to presume that these constituents are present in the ash at levels above UTS. In addition, we request data on levels of dioxin and furan leaching from incinerator ash, both untreated and after stabilization. These data will be highly important for our deliberations on whether to establish a separate waste code for incineration ash and, if so, what the treatment standard should be.

E. Would the Incinerator Ash Waste Code Be Optional?

Our initial thinking is that the original waste codes would not apply to incinerator ash (*i.e.*, no waste code carry through). This is mainly because categorizing ash according to the original waste codes may, in some cases, result in less treatment of waste constituents than if the waste were categorized as a new waste code for incineration ash. For example, ash from the incineration of listed organic wastes may contain low levels of metals that would not be treated under the treatment standard for the original waste but would be found at higher levels in the ash due to concentration. We solicit comments on this issue and, in particular, whether the incinerator ash code should always apply, or whether the original waste codes should apply in some circumstances (including on a case-by-case basis). We would also like comments on how this second option would affect the consistency and accuracy of the BRS database.

F. Are There Ways To Reduce the Analytical Burden?

We are soliciting comments on approaches that could be used to limit the number of constituents that would

require testing and analysis if a new waste code for incinerator ash were established. For example, we already have provided regulatory relief for organic constituents in listed waste that have been combusted when testing and analysis indicates they are below detection limits (40 CFR 268.40(d)). The provision allows these wastes to meet concentrations that are one order of magnitude greater than the LDR treatment standard. Under the ash waste code approach, would it be environmentally protective to allow testing and analysis of the other organic constituents to serve as surrogates for nondetectable constituents? If so, which ones? We solicit data on this issue.

One variation on this approach would apply a reduced analytical scheme only to incineration units that treat many waste codes. Rather than require analysis of the hundreds of constituents that could potentially be present, we could instead develop a list of surrogate constituents to regulate. We note that some previous efforts along this line have shown that selecting appropriate surrogates is a very difficult technical challenge. If we could overcome this challenge, then we expect that this list would most likely include the most difficult to combust organic constituents, all metals, and some thermally labile constituents to confirm performance of the unit. Analysis of these surrogate constituents would demonstrate adequate treatment of all incoming wastes of concern. These types of treatment data would also show whether metals have concentrated in the ash, and what types of treatment (*e.g.*, stabilization) would be appropriate before land disposal. We are requesting comment on this issue, including data and potential constituents for this surrogate list.

G. Request for Comment

We are requesting comments and data on the following ash waste code topics.

- We solicit general comments on whether we should establish a waste code for incineration ash.
- We solicit comments on whether to exclude ash derived exclusively from listed dioxin-containing wastes F020–F023 and F026–F027 from the incineration ash code.
- We solicit data on whether there are significant differences in the ash from different combustion units, and whether hazardous constituents partition into different types of residues, from these different units. If differences do exist, should we regulate the ash from these different units accordingly?
- We solicit comments on whether the incineration ash waste code should be defined as the incineration of more than one hazardous waste containing organic constituents, including organic toxicity wastes (D012–D043) and wastes with greater than 1% total organic carbon, or whether it should be defined in some other way.
- We solicit comment on whether the treater should only be responsible for meeting the treatment standards for those constituents specified in their permit waste analysis plan, which would be negotiated on a site-specific basis.
- We solicit comments on whether the incinerator ash code should always apply, or whether the original waste codes should apply in some circumstances (including on a case-by-case basis). We would also like comments on how this second option would affect the consistency and accuracy of the BRS database.
- We solicit comments on approaches that could be used to limit the number of constituents that would require testing and analysis if a new waste code were established.
- We solicit comment and data on whether under the ash waste code approach, would it be environmentally protective to allow testing and analysis of the other organic constituents to serve as surrogates for nondetectable constituents? If so, which ones?

XI. Should EPA Establish Tailored Treatment Standards for Mixed Wastes? [41]

A. What Are Mixed Wastes?

Mixed wastes are those wastes that satisfy the definition of radioactive waste subject to the Atomic Energy Act (AEA) and that also contain listed or characteristic hazardous wastes. On July 3, 1986, we determined that the hazardous portions of mixed wastes are subject to RCRA regulation (51 FR 4504). This situation creates a dual and complementary regulatory framework between RCRA and the AEA.

Because the hazardous portions of mixed waste are subject to RCRA, the land disposal restrictions apply. The hazardous portions must therefore meet the appropriate LDR treatment standards before land disposal.

B. What Are the Issues Associated With Regulating Mixed Wastes?

Potential difficulties exist when applying the LDRs to mixed waste. They relate primarily to analytical problems and concerns about worker exposure to radiation when treating or testing mixed waste.

The Department of Energy (DOE) has raised these types of issues at several junctures, including the July 1998 LDR roundtable and in comments on several LDR rules, the proposed Hazardous Waste Identification Rule (HWIR), and the Mixed Waste Disposal Rule. With respect to compliance monitoring, DOE asserts that the difficulty and costs associated with sampling and analysis increase as the constituent concentration levels that need to be detected are lowered and as radiological exposure increases. Some of the analytical difficulties and costs associated with sampling and analysis include:

- Sample collection—The sample volumes specified in ''Test Methods for Hazardous Wastes'' (SW–846) may not be obtainable for high level mixed waste (*i.e.*, spent fuel from commercial nuclear power plants and defense high-level waste from the production of weapons) because the sample volumes would result in excessive radiation exposure to personnel collecting the samples and conducting the analyses.
- Storage—Special sample storage containers must be used to address radiological hazards. For example, refrigeration of samples cannot be achieved in all instances because samples must be placed in pre-designed lead-lined shipment containers that do not lend themselves to cooling.
- Interference due to the radiological matrix—Some radionuclides interfere with the detection of hazardous constituents. For example, when a mixed waste sample containing plutonium is volatilized and analyzed as an emission spectra, the plutonium peak obscures peaks that indicate the presence of hazardous metals. DOE asserts that this is a common analytical problem for mixed waste containing transuranic elements (atomic number greater than 92).
- Manipulating high level mixed waste—Analysis must be conducted in hot cell laboratories where the waste is remotely handled. The use of manipulators is time consuming and, as a result, it is often difficult to conform to the holding times specified in SW–846.
- Limited analytical capacity and capability—Laboratory capacity as well as capability for handling mixed waste is limited. The shortage in capacity is most acute for higher level wastes. In addition, when equipment becomes ''hot'' due to exposure to radionuclides in samples, it must be dedicated to analysis of radioactive materials only.

[41] Note that EPA recently published a proposed rule on the storage, treatment, transportation, and disposal of mixed waste proposed rule. See 64 FR 63464, November 19, 1999.

• Waste disposal—The costs associated with cleanup and waste disposal after analysis are substantial. For example, protective clothing and equipment used during sampling activities must be handled as low level radioactive waste.

• Exposure—The policy under DOE's health and safety program is to maintain exposures As Low As Reasonably Achievable (ALARA). Worker exposure during collection, handling, and transport of samples as well as during analysis needs to be minimized, which sometimes does not occur when meeting RCRA compliance obligations.

C. How Has EPA Responded to the Issues Associated With Regulating Mixed Waste?

Recognizing the public's concern over potential radiation exposure from mixed waste testing, we developed, in close coordination with the Nuclear Regulatory Commission (NRC), a mixed waste testing guidance titled ''Joint NRC/EPA Guidance on Testing Requirements for Mixed Radioactive and Hazardous Waste.'' [42] The primary purpose of this guidance document is to help NRC licensees and others characterize their mixed waste in accordance with RCRA regulations while keeping radiation exposure as low as reasonably achievable (ALARA). The guidance emphasizes flexibility in the RCRA testing requirements so that the ALARA concept can be incorporated. For example, the guidance emphasizes and encourages the use of process knowledge whenever possible to avoid unnecessary exposure to radiation. The guidance describes methods by which individuals who sample and analyze mixed waste may reduce their occupational radiation exposure, for example by keeping RCRA frequency of testing to a minimum by avoiding duplicative testing.

In the LDR Third Third final rule (55 FR 22552, June 1, 1990), we relied upon data and information submitted by DOE to tailor several treatment standards for certain mixed wastes. These data indicated that for certain high-level wastes that also display hazardous metal characteristics the most appropriate treatment standard is vitrification. The DOE vitrification process reduces the mobility of both the hazardous and radioactive components of the waste. We therefore adopted vitrification as the treatment standard for these high level mixed wastes. Because the treatment standard is expressed as a specified method of treatment, facilities need not demonstrate compliance by routinely measuring concentration levels, thus minimizing worker contact with the high level mixed waste.

Another treatment standard was established for characteristic radioactive lead solids. It requires radioactive wastes such as lead shielding, pigs, and other elemental forms of lead to be macroencapsulated. By requiring a surface coating or a jacket of inert inorganic materials, this treatment standard substantially reduces surface exposure to potential leaching media. We established other tailored treatment standards for mixed wastes containing elemental mercury and for mercury contaminated radioactive hydraulic oil. All of these treatment standards reduce workers' exposure to radioactivity because there is no requirement to measure compliance with treatment standard levels.

In addition, in a recent ANPRM (64 FR 28949, May 28, 1999) we solicited comment on establishing a tailored treatment standard for one type of radioactive mixed waste containing mercury. As explained in that ANPRM, under current regulations, no separate treatment category exists for high mercury wastes that also contain radioactive materials. Therefore, the current regulations may result in equipment contamination by radiation to recover radioactive mercury that must then be further treated and disposed because it is no longer useful. In the mercury ANPRM, we specifically requested comments on eliminating the retorting treatment standard for mixed mercury wastes, and on allowing the use of alternative technologies, with the residuals having to comply with a numerical limit. Please refer to the mercury ANPRM for additional discussion of this issue and instructions for viewing background materials.

D. What Is EPA Considering in This ANPRM?

The threat of radiological exposure cannot be completely eliminated because mixed wastes will require handling for purposes of treatment and compliance monitoring before disposal. Therefore, we encourage NRC licensees and others to use the ''Joint NRC/EPA Guidance on Testing Requirements for Mixed Radioactive and Hazardous Waste'' to keep the worker exposure to radiation to a minimum. Precautions to minimize exposure from waste analysis should be identified and incorporated into site-specific waste analyses plans, which are overseen by state and regional authorities under the Federal Facilities Compliance Act.

We remain committed to reducing radiological exposure as much as possible. Therefore, we wish to explore if additional opportunities exist for mixed radioactive wastes to have a specified method of treatment rather than concentration limits as the treatment standard. For instance, high-level nonwastewaters that must be remotely handled may be good candidates for a specified treatment method such as vitrification, if it is designed to trap air and water emissions and to create a stable glass. Similarly, carbon adsorption may be appropriate for certain mixed radioactive wastewaters such as high molecular weight organics.

E. Request for Comment

We are soliciting comments and data on the treatability of mixed waste and on the analytical problems associated with measuring compliance with concentration levels. In particular, we are interested in whether there are other treatment methods that should be tailored to specific mixed wastes, like the ones established in the Third Third final rule, particularly because such standards eliminate the need for compliance monitoring with its associated dangers of worker exposure to radiation.

Commenters should submit data on the technology and its operating parameters. It is important that the data submitted is complete (*i.e.*, a complete description of the technology, its operating parameters, and any chemical reactions that take place). In addition, the commenter should submit data on the properties of the mixed waste for which the tailored treatment method is requested. This should also include detailed information on whether and how the presence of radionuclides affects the performance of the treatment technology. Once these data are evaluated, we may propose to establish tailored treatment standards that are expressed as required methods of treatment for certain mixed radioactive wastes.

XII. Is EPA Addressing LDR Paperwork Burden in This ANPRM?

One of the issues raised during the LDR roundtable was whether the paperwork burden could be reduced in the LDR program. Participants suggested that we allow electronic recordkeeping and reporting, and that we further reduce the requirements for generators, treaters, and disposers. We agree that these are good ideas. They are not, however, discussed in this ANPRM, but they are included in a separate EPA Notice of Data Availability (NODA) that

[42] This guidance document can be found in the docket for today's notice.

addresses burden reduction. See 64 FR 32859, June 18, 1999.

The NODA contains ideas to reduce the reporting and recordkeeping paperwork burden throughout OSW's regulatory programs, including the LDR program. Currently, the LDR paperwork requirements account for nearly one-third of the burden for the RCRA program. Substantial reduction has already occurred, particularly as a result of the May 12, 1997 LDR rule. Before this rule, generators and treaters that sent their hazardous waste off-site had to send a notification with each shipment of waste informing treaters and disposers of the composition of the waste stream. This rule changed these requirements so that the notification need only be sent with the initial waste shipment, so long as the waste and the receiving facility remained unchanged. This paperwork change resulted in a savings of 1,630,000 burden hours annually.

The NODA describes a number of other possible changes to reduce the LDR burden. These changes include eliminating 268.7(a)(1) Generator Waste Determinations; eliminating 268.7(b)(6) Recycler Notifications and Certifications; eliminating 268.7(d) Hazardous Debris Notifications; eliminating 268.9(a) Characteristic Waste Determinations; and streamlining 268.9(d) Notification Procedures. See the NODA for further information on these possible changes to reduce the LDR paperwork burden.

The NODA was the first step in developing a final regulation for reducing reporting and recordkeeping burden for the RCRA program. We plan to issue a proposed rule this year to follow-up on some of the items in the NODA.

XIII. What Issues Are Not Addressed in This ANPRM?

In addition to the nine main issues described in this ANPRM, a number of other issues were brought up by participants at the 1998 LDR roundtable. Due to our own prioritization and resource constraints, we were not able to investigate these issues in depth. We are, however, interested in new comments from you on any of these issues.

1. Dilution prohibition: In the 1996 Phase III LDR rule (61 FR 15566, April 8, 1996), we promulgated a list of inorganic wastes that are not allowed to be treated by combustion because of the low presence of organics in these wastes. We may need to investigate which inorganic wastes are currently combusted, and determine whether to expand the list, if it is currently too restrictive. Also, we may need to investigate current information available to EPA on the issue of wastes that go into fuel blending and the issue of waste code carry-through.

2. Generator Knowledge: We could investigate whether there is too much or too little reliance on generator knowledge to determine which underlying hazardous constituents in characteristic wastes need to be treated.

3. Plain Language: We could simplify the LDRs by rewriting them in plain language.

4. Refractory Bricks: We could evaluate whether refractory bricks from incinerators should still be subject to treatment standards based on listed waste codes.

5. Generator Guidance: We could clarify through guidance how generators can more easily determine when LDRs apply and which treatment standards are applicable.

XIV. Administrative Requirements

A. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the APA or any other statute 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 organizations, and small governmental jurisdictions. This ANPRM will not have a significant impact on a substantial number of small entities because it does not create any new requirements. Therefore, EPA provides the following certification under the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act: Pursuant to the provision at 5 U.S.C. 605(b), I certify that this action will not have a significant economic impact on a substantial number of small entities. However, there is the potential for future actions related to this ANPRM to have a significant economic impact on a substantial number of small entities. Therefore, the Agency will examine whether the Regulatory Flexibility Act applies in the preparation of any future rulemakings related to this ANPRM.

B. 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 ANPRM is not subject to E.O. 13045 because it is does not, at this point, involve decisions intended to mitigate environmental health or safety risks. Of course, as the information in response to this ANPRM is evaluated, we will continue to examine whether E.O. 13045 applies.

List of Subjects in 40 CFR Part 268

Hazardous waste, Reporting and recordkeeping requirements.

Dated: June 12, 2000.

Carol M. Browner,

Administrator.

[FR Doc. 00–15392 Filed 6–16–00; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 350, 390, 394, 395 and 398

[Docket No. FMCSA–97–2350; formerly FHWA–97–2350 and MC–96–28]

RIN 2126–AA23

Hours of Service of Drivers; Driver Rest and Sleep for Safe Operations

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); extension of comment period.

SUMMARY: The FMCSA is extending this rulemaking's comment period until October 30, 2000. This is in response to numerous petitions received by the FMCSA from motor carriers, drivers and trucking associations, and several members of Congress requesting an extension of the comment period closing date. The petitioners based their requests on the time required to review the vast body of research, assess the impact of the proposed rules, and provide meaningful comments.

The FMCSA is also placing in the docket the pre-publication final report on ''Effects of Sleep Schedules on Commercial Motor Vehicle Driver Performance,'' prepared by the Division

of Neuropsychiatry, Walter Reed Army Institute of Research.

DATES: Comments to the NPRM should be received no later than October 30, 2000. Late comments will be considered to the extent practicable.

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

FOR FURTHER INFORMATION CONTACT: *For information on the proposed rule:* Mr. David Miller or Ms. Deborah Freund, Federal Motor Carrier Safety Administration, (202) 366–1790, and Mr. Charles Medalen, Office of the Chief Counsel, Federal Highway Administration, (202) 366–1354. *For information about submitting comments and data electronically:* DMS Web staff at: Mail. *Dockets@tasc.dot.gov,* Department of Transportation, 400 Seventh Street, SW.,Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION: On May 2, 2000 (65 FR 25540), the FMCSA published an NPRM proposing to revise its hours-of-service (HOS) regulations to require motor carriers to provide drivers with better opportunities to obtain sleep, and thereby reduce the risk of drivers operating commercial motor vehicles (CMV) while drowsy, tired, or fatigued to reduce crashes involving these drivers. The FMCSA explained that this action is necessary because we estimate that 755 fatalities and 19,705 injuries occur each year on the nation's roads because of drowsy, tired, or fatigued CMV drivers. The proposed regulations would:

1. Revert to a 24-hour daily cycle, and a 7-day weekly cycle.
2. Adjust the work-rest requirements for various types of operations.
3. Emphasize rest. Require, for long-haul and regional drivers, a period of 10 consecutive hours off duty within each 24-hour cycle, and two hours of additional time off in each 14-hour work period within each 24-hour cycle.
4. Require weekends, or their functional equivalent, to include at a minimum a rest period that includes two consecutive periods from 11 p.m. to 7 a.m.
5. Require the use of electronic on-board recorders in CMVs used by drivers in long-haul and regional operations.

The FMCSA has received petitions from the American Trucking Associations, Commercial Vehicle Safety Alliance, Distribution and LTL Carriers Association, National Private Truck Council and numerous motor carriers, drivers, other industry associations, and members of Congress requesting that the comment period to be extended. The petitioners voiced concerns that the lengthy proposed rule was extremely complex and that 90 days was insufficient time to review the research, assess the impact of the proposed rules on CMV operations, and provide meaningful comments. We agree that more time for in-depth analysis of the NPRM, including the numerous studies involving fatigue, driver physiology, crash data, and operating characteristics of the various CMV operations, by the affected parties, would be beneficial to the FMCSA in this rulemaking. For the reasons above, the FMCSA finds good cause to extend this NPRM comment period closing date for 90 days.

The FMCSA is also placing in the docket the pre-publication final report on ''Effects of Sleep Schedules on Commercial Motor Vehicle Driver Performance,'' prepared by the Division of Neuropsychiatry, Walter Reed Army Institute of Research.

Authority: 49 U.S.C. 322 and 49 CFR 1.73.

Issued on: June 12, 2000.

Clyde J. Hart, Jr.

Acting Deputy Administrator.

[FR Doc. 00–15416 Filed 6–16–00; 8:45 am]

BILLING CODE 4910–22–P

Notices

Federal Register
Vol. 65, No. 118
Monday, June 19, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 00–050–1]

Symposium; Reptile Industry

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of symposium.

SUMMARY: The Animal and Plant Health Inspection Service is hosting a symposium for the exchange of information among representatives of the reptile industry, animal agriculture, and Federal and State agencies. The public is invited to attend the symposium.

DATES: We invite you to comment on this docket. We will consider all comments that we receive by August 18, 2000.

The symposium will be held in Tallahassee, FL, on Tuesday and Wednesday, July 11 and 12, 2000. The symposium will begin at 8 a.m. and end at 5:30 p.m each day, local time. On-site registration and sign-in for preregistered attendants will take place from 7:30 a.m. to 8 a.m. each day.

ADDRESSES: If you cannot attend the symposium, please send your written comment and three copies to: Docket No. 00–050–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 00–050–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

The symposium will be held at the Ramada Inn and Conference Center, 2900 North Monroe Street, Tallahassee, FL 32303; (850) 386–1027.

FOR FURTHER INFORMATION CONTACT: D. D. Wilson, Senior Staff Entomologist, Emergency Programs Staff, VS, APHIS, 4700 River Road Unit 41, Riverdale, MD 20737–1231; (301) 734–8073.

SUPPLEMENTARY INFORMATION: The Animal and Plant Health Inspection Service (APHIS) plans to host a symposium in Tallahassee, FL, on July 11 and 12, 2000. The symposium will be open to the public and will provide a forum for the exchange of information among representatives of the reptile industry, animal agriculture, and Federal and State agencies.

Information presented at the symposium will be related to the U.S. reptile industry. Specific presentations offered by participants will include information on:

- The reptile industry, including growth trends, economics, and market/industry segments and operations;
- Key issues and considerations for safeguarding against the introduction of nonindigenous species of ticks on imported reptiles;
- Handling and inspection of reptiles for the presence of ticks and existing methods for treating, controlling, and preventing ectoparasites on reptiles;
- Animal and human health implications posed by tick-borne diseases; and
- Various regulatory authorities that exist among State and Federal agencies related to the importation and commerce of tortoises.

There will be an opportunity for questions from the public at the conclusion of each day of the symposium.

Advance Registration

Advance registration is requested by July 3, 2000. Although advance registration is not required, attendance may be limited based on public response and conference center accommodations. There is no registration fee.

To register in advance for the symposium, please send your name, affiliation, address, and telephone number either by e-mail to Dave.D.Wilson@usda.gov or by fax to (301) 734–7817.

If you have any questions about registration, contact the person listed under **FOR FURTHER INFORMATION CONTACT** near the beginning of this document.

Written Comments

If you cannot attend the symposium, you may submit written comments on the topics outlined in this notice. To submit written comments, please follow the instructions listed under the heading **ADDRESSES** near the beginning of this document.

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 21 U.S.C. 111–113, 114a, 115, 117, 120, 122–126, 134a, 134b, 134c, 134d, 134f, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.2(d).

Done in Washington, DC, this 13th day of June 2000.

Craig A. Reed,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–15364 Filed 6–16–00; 8:45 am]

BILLING CODE 3410–34–P

CENSUS MONITORING BOARD

Notice of Public Meeting

SUMMARY: This notice, in compliance with Pub. L. 105–119, sets forth the meeting date, time, and place for two public meetings of the U.S. Census Monitoring Board in Southern California. The agenda is to hear from community based groups regarding the operations of the census within the area. Additionally, the Board will have a general business meeting.

Date: Monday June 26, 2000.

Time: 10 a.m. to 12:30 p.m.

Location: Town & Gown Center, Main Campus, University of Southern California, Los Angeles, CA

Date: Tuesday, June 27, 2000.

Time: 9 a.m. to 11 a.m.

Location: San Diego Association of Governments, 7th Floor, Board Room, 401 B Street, San Diego, CA.

FOR FURTHER INFORMATION CONTACT: Contact Clark Reid, 301–457–5080

Deputy Executive Director (Congressional Members) or Robert Cunningham (Presidential Members) 301–457–9900.

Dated: June 13, 2000.

Fred T. Asbell,

Executive Director, Congressional Members.

Mark Johnson,

Executive Director, Presidential Members.

[FR Doc. 00–15358 Filed 6–16–00; 8:45 am]

BILLING CODE 3510–07–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 28–2000]

Foreign-Trade Zone 29—Louisville, Kentucky Application for Expansion

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the Louisville and Jefferson County Riverport Authority, grantee of Foreign-Trade Zone 29, requesting authority to expand FTZ 29, Louisville, Kentucky, within the Louisville Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on June 9, 2000.

FTZ 29 was approved on May 26, 1977 (Board Order 118, 42 FR 29323, 6/8/77), and expanded on January 31, 1989 (Board Order 429, 54 FR 5992, 2/7/89); December 15, 1997 (Board Order 941, 62 FR 67044, 12/23/97); and, July 17, 1998 (Board Order 995, 63 FR 40878, 7/31/98). The zone project currently consists of two sites in the Louisville, Kentucky area: *Site 1* (1,298 acres)—located within the Riverport Industrial Complex; and, (247 acres)—along Johnsontown Road, which is adjacent to the Riverport Industrial Complex; *Site 2* (593 acres)—located at the junction of Gene Snyder Freeway and La Grange Road in eastern Jefferson County; *Site 3* (142 acres)—U.S. Navy Ordnance Facility, 5403 Southside Drive, Louisville; *Site 4* (2,311 acres)—consisting of the Louisville International Airport and three other airport-related parcels; and, *Site 5* (70 acres)—the Ashland Inc. Tank Farm and pipelines, 4510 Algonquin Parkway along the Ohio River, Louisville, which supplies part of the airport's fuel system.

The applicant is now requesting authority to add another parcel to Site 1: (130 acres)—Greenbelt and Lower Hunter's Trace Roads, adjacent to northern boundary of existing Site 1. The parcel is owned by the applicant. No specific manufacturing authority is being requested at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is August 18, 2000. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to September 5, 2000.)

A copy of the application and accompanying exhibits will be available during this time for public inspection at each of the following locations:

U.S. Department of Commerce, Export Assistance Center 601 W. Broadway, Room 634B, Louisville, Kentucky 40202.

Office of the Executive Secretary, Foreign-Trade Zone Board, Room 4008, U.S. Department of Commerce, 14th & Pennsylvania Avenue, N.W., Washington, DC 20230.

Dated: June 12, 2000.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 00–15405 Filed 6–16–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1096]

Approval for Extension of Authority of Board Order 744; Foreign-Trade Subzone 59A, Kawasaki Motors Manufacturing Corp., U.S.A. (Utility Work Trucks), Lincoln, NE

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, Board Order 744 (60 FR 30518, 6–9–95) granted authority on behalf of Kawasaki Motors Manufacturing Corp., U.S.A. (KMM) to manufacture utility work trucks (*i.e.,* Mules™) under FTZ procedures for an initial period of four years (expires July 1, 2000), subject to extension;

Whereas, KMM, operator of Subzone 59A, has requested authority to extend its manufacturing authority for utility work trucks on a permanent basis;

Whereas, notice inviting public comment was given in the **Federal Register** (64 FR 25476, 5–12–99);

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the request would be in the public interest;

Now therefore, the Board hereby approves the request subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 12th day of June 2000.

Troy H. Cribb,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

ATTEST:

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 00–15402 Filed 6–16–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1095]

Approval for Manufacturing Authority (Flavor and Fragrance Products) Within Foreign-Trade Zone 44, Givaudan Roure Corporation, Mt. Olive, NJ

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the New Jersey Commerce and Economic Growth Commission, grantee of Foreign-Trade Zone 44, has made application to the Board for authority on behalf of Giuvaudan Roure Corporation to manufacture flavor and fragrance products under FTZ procedures within FTZ 44(FTZ Docket 44–99, filed 9/3/99); Whereas, notice inviting public comment has been given in the **Federal Register** (64 FR 49442, 9/13/99); and,

Whereas, the Board's regulations (15 CFR § 400.31) provide for the authorization of manufacturing within existing zones when it is in the public interest; Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application is in the public interest;

Now therefore, the Board hereby approves the request subject to the FTZ

Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 12th day of June 2000.

Troy H. Cribb,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

ATTEST:

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 00–15401 Filed 6–16–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1103]

Termination of Foreign-Trade SubZone 121B Rensselaer, New York

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), and the Foreign-Trade Zones Board Regulations (15 CFR Part 400), the Foreign-Trade Zones Board has adopted the following order:

Whereas, on December 12, 1995, the Foreign-Trade Zones Board issued a grant of authority to the Capital District Regional Planning Commission, authorizing the establishment of Foreign-Trade Subzone 121B at the BASF Corporation plant in Rensselaer, New York (Board Order 794, 61 FR 1322, 1/19/96);

Whereas, the Commission advised the Board on August 31, 1999 (FTZ Docket 13–2000), that zone procedures were no longer needed at the facility and requested voluntary termination of Subzone 121B;

Whereas, the request has been reviewed by the FTZ Staff and the Customs Service, and approval has been recommended;

Now, therefore, the Foreign-Trade Zones Board terminates the subzone status of Subzone No. 121B, effective this date.

Signed at Washington, DC, this 12th day of June, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 00–15404 Filed 6–16–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1102]

Expansion of Foreign-Trade Zone 8 Toledo, OH

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Toledo-Lucas County Port Authority, grantee of Foreign-Trade Zone 8 (Toledo, Ohio), submitted an application to the Board for authority to expand FTZ 8 to include an additional site in Fremont, Ohio (Site 3), within the Toledo/Sandusky Customs port of entry (FTZ Docket 40–99; filed 8/5/99);

Whereas, notice inviting public comment was given in the **Federal Register** (64 FR 44891, 8/18/99) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, Therefore, the Board hereby orders:

The application to expand FTZ 8 is approved, subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 12th day of June 2000.

Troy H. Cribb,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

ATTEST:

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 00–15403 Filed 6–16–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–852]

Structural Steel Beams from Japan: Notice of Antidumping Duty Order

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

ACTION: Notice of Antidumping Duty Order.

EFFECTIVE DATE: June 19, 2000.

FOR FURTHER INFORMATION CONTACT: Juanita H. Chen or Robert A. Bolling, Antidumping and Countervailing Duty Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, at (202) 482–0409, or (202) 482–3434, respectively.

APPLICABLE STATUTE AND REGULATIONS: Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''Act''), are to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department of Commerce's (''Department'') regulations are to the regulations codified at 19 CFR part 351 (April 1, 1998).

Final Determination

On April 18, 2000, the Department determined that structural steel beams from Japan are being, or likely to be, sold in the United States at less than fair value (''LTFV''), as provided in section 735(a) of the Act. See Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from Japan, 65 FR 24182 (April 25, 2000).

Scope of the Order

For purposes of this order, the products covered are doubly-symmetric shapes, whether hot-or cold-rolled, drawn, extruded, formed or finished, having at least one dimension of at least 80 mm (3.2 inches or more), whether of carbon or alloy (other than stainless) steel, and whether or not drilled, punched, notched, painted, coated, or clad. These products (''Structural Steel Beams'') include, but are not limited to, wide-flange beams (''W'' shapes), bearing piles (''HP'' shapes), standard beams (''S'' or ''I'' shapes), and M-shapes.

All products that meet the physical and metallurgical descriptions provided above are within the scope of this investigation unless otherwise excluded. The following products, are outside and/or specifically excluded from the scope of this investigation:

- Structural steel beams greater than 400 pounds per linear foot or with a web or section height (also known as depth) over 40 inches.

The merchandise subject to this investigation is classified in the Harmonized Tariff Schedule of the United States (''HTSUS'') at subheadings: 7216.32.0000, 7216.33.0030, 7216.33.0060, 7216.33.0090, 7216.50.0000,

7216.61.0000, 7216.69.0000, 7216.91.0000, 7216.99.0000, 7228.70.3040, 7228.70.6000. Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

Antidumping Duty Order

On June 9, 2000, the International Trade Commission (''Commission'') notified the Department of its final determination pursuant to section 735(b)(1)(A)(i) of the Act that an industry in the United States is materially injured by reason of less-than-fair-value imports of subject merchandise from Japan. Therefore, in accordance with section 736(a)(1) of the Act, the Department will direct Customs officers to assess, upon further advice by the Department, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price (or constructed export price) of the merchandise for all relevant entries of structural steel beams from Japan. These antidumping duties will be assessed on all unliquidated entries of structural steel beams from Japan entered, or withdrawn from warehouse, for consumption on or after February 11, 2000, the date on which the Department published its notice of preliminary determination in the **Federal Register**. See Notice of Preliminary Determination of Sales at Less Than Fair Value: Structural Steel Beams From Japan, 65 FR 6992 (February 11, 2000). On or after the date of publication of this notice in the **Federal Register**, Customs officers must require, at the same time as importers would normally deposit estimated duties, cash deposits for the subject merchandise equal to the estimated weighted-average antidumping duty margins as noted below. The ''All Others'' rate applies to all exporters of subject stainless steel sheet and strip in coils not specifically listed. The revised weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average Margin (in percent)
Kawasaki Steel Corporation	65.21
Nippon Steel Corporation	65.21
NKK Corporation/TOA Steel Co., Ltd	65.21
Sumitomo Metals Industries, Ltd	65.21
Tokyo Steel Manufacturing Co., Ltd	65.21
Topy Industries, Limited	65.21
All Others	31.98

This notice constitutes the antidumping duty order with respect to structural steel beams from Japan. Interested parties may contact the Department's Central Records Unit, room B–099 of the main Commerce building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Tariff Act of 1930, as amended.

Dated: June 14, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–15520 Filed 6–16–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–856]

Notice of Amendment of Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Synthetic Indigo From the People's Republic of China

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

EFFECTIVE DATE: June 19, 2000.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger or Dinah McDougall, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4136 or (202) 482–3773, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department of Commerce's (''the Department's'') regulations refer to 19 CFR Part 351 (1999).

Amendment to the Final Determination

On May 3, 2000, the Department published its final determination that synthetic indigo from the People's Republic of China (PRC) is being, or is likely to be, sold in the United States at less than fair value. *See Synthetic Indigo from the People's Republic of China; Notice of Final Determination of Sales at Less Than Fair Value,* 65 FR 25706, May, 3, 2000) (''Final Determination''). On May 9, 2000, we received a timely submission from the petitioners, Buffalo Color Corporation and the United Steelworkers of America, AFL–CIO/CLC, alleging ministerial errors pertaining to the margin calculations in the Department's final determination.

After analyzing the submissions, we determined, in accordance with 19 CFR 351.224, that ministerial errors were made in the margin calculations for the exporter Wonderful Chemical Industrial Ltd. (''Wonderful''). Specifically:

- In valuing the dispersing agent factor in the final determination calculation of normal value, the Department inadvertently applied the per-kilogram price to the per-metric-ton factor.
- The Department inadvertently omitted price corrections for certain sales made by Wonderful, which were identified at verification.

For a detailed discussion of the ministerial error allegations and the Department's analysis, *see* Memorandum to Richard W. Moreland from the Team, dated May 25, 2000.

Therefore, in accordance with 19 CFR 351.224(e), we are amending the final determination of the antidumping duty investigation of synthetic indigo from the PRC. The revised weighted-average dumping margins are listed in the ''Antidumping Order'' section below.

Scope of Order

The products subject to this investigation are the deep blue synthetic vat dye known as synthetic indigo and those of its derivatives designated commercially as ''Vat Blue 1.'' Included are Vat Blue 1 (synthetic indigo), Color Index No. 73000, and its derivatives, pre-reduced indigo or indigo white (Color Index No. 73001) and solubilized indigo (Color Index No. 73002). The subject merchandise may be sold in any form (*e.g.,* powder, granular, paste, liquid, or solution) and in any strength. Synthetic indigo and its derivatives subject to this investigation are currently classifiable under subheadings 3204.15.10.00, 3204.15.40.00 or 3204.15.80.00 of the *Harmonized Tariff Schedule of the United States* (''HTSUS''). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Antidumping Duty Order

On June 12, 2000, in accordance with section 735(d) of the Act, the U.S. International Trade Commission (ITC) notified the Department that a U.S. industry is materially injured by reason

of imports of synthetic indigo from the PRC, pursuant to section 735(b)(1)(A) of the Act. In addition, the ITC found that critical circumstances exist with regard to such imports from the PRC.

Therefore, in accordance with section 736(a)(1) of the Act, the Department will direct the United States Customs Service to assess, upon further advice by the Department, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price or constructed export price of the merchandise for all relevant entries of synthetic indigo from the PRC. These antidumping duties will be assessed on all unliquidated entries of imports of the subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after September 15, 1999, the date 90 days prior to the date of publication of the preliminary determination in the **Federal Register**, in accordance with the critical circumstances finding in the final determination.

On or after the date of publication of this notice in the **Federal Register**, U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties, the cash deposits listed below for the subject merchandise. The ''PRC-wide Rate'' applies to all exporters of synthetic indigo not specifically listed below.

The revised final weighted-average margins are as follows:

Exporter/Manufacturer	Original final margin percentage	Revised final margin percentage
Wonderful Chemical Industrial Ltd./Jiangsu Taifeng Chemical Industry Co., Ltd	77.89	79.70
China National Chemical Construction Jiangsu Company	77.89	79.70
China Jiangsu International Economic Technical Cooperation Corp	77.89	79.70
Shanghai Yongchen International Trading Company Ltd	77.89	79.70
Hebei Jinzhou Import & Export Corporation	77.89	79.70
Sinochem Hebei Import & Export Corp	77.89	79.70
Chongqing Dyestuff Import & Export United Corp	77.89	79.70
Wuhan Tianjin Chemicals Imports & Exports Corp., Ltd	.....	.....
PRC-wide Rate	129.60	129.60

This notice constitutes the antidumping duty order with respect to synthetic indigo from the PRC, pursuant to section 736(a) of the Act. Interested parties may contact the Central Records Unit, Room B–099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act and 19 CFR 351.211.

Dated: June 13, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–15400 Filed 6–16–00; 8:45 am]

BILLING CODE 3510–DS–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Pakistan

June 13, 2000.

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

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

EFFECTIVE DATE: June 19, 2000.

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

SUPPLEMENTARY INFORMATION:

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

The current limits for certain categories are being adjusted for swing and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Also see 64 FR 68335, published on December 7, 1999.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 13, 2000.

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

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 1, 1999, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Pakistan and exported during the twelve-month period which began on January 1, 2000 and extends through December 31, 2000.

Effective on June 19, 2000, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Specific limits	
226/313	121,532,812 square meters.
315	76,226,472 square meters.
331/631	3,345,885 dozen pairs.
334/634	305,560 dozen.
335/635	471,876 dozen.
336/636	620,789 dozen.
338	6,368,561 dozen.
339	1,857,088 dozen.
340/640	874,134 dozen of which not more than 290,088 dozen shall be in Categories 340–D/640–D [2].
341/641	931,184 dozen.
347/348	1,086,702 dozen.
351/651	413,859 dozen.
352/652	1,034,648 dozen.
359–C/659–C [3]	1,862,368 kilograms.
360	6,682,672 numbers.
361	7,770,547 numbers.
363	56,304,240 numbers.
369–F/369–P [4]	3,119,984 kilograms.
369–R [5]	14,485,083 kilograms.
369–S [6]	952,554 kilograms.
638/639	598,638 dozen.
647/648	1,074,729 dozen.

Category	Adjusted twelve-month limit [1]
666–P [7]	771,494 kilograms.
666–S [8]	4,878,497 kilograms.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1999.

[2] Category 340–D: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2025 and 6205.20.2030; Category 640–D: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2030, 6205.30.2040, 6205.90.3030 and 6205.90.4030.

[3] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[4] Category 369–F: only HTS number 6302.91.0045; Category 369–P: only HTS numbers 6302.60.0010 and 6302.91.0005.

[5] Category 369–R: only HTS number 6307.10.1020.

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

[7] Category 666–P: only HTS numbers 6302.22.1010, 6302.22.1020, 6302.22.2010, 6302.32.1010, 6302.32.1020, 6302.32.2010 and 6302.32.2020.

[8] Category 666–S: only HTS numbers 6302.22.1030, 6302.22.1040, 6302.22.2020, 6302.32.1030, 6302.32.1040, 6302.32.2030 and 6302.32.2040.

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

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–15362 Filed 6–16–00; 8:45 am]

BILLING CODE 3510–DR–F

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

AGENCY: U.S. Consumer Product Safety Commission, Washington, DC 20207.

TIME AND DATE: Friday, June 23, 2000, 10:00 a.m.

LOCATION: Room 420, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Open to the Public.

MATTER TO BE CONSIDERED:

Oral Drugs Switched From Prescription to Over the Counter (OTC) Status

The Commission will consider the staff's recommendation to propose that child-resistant packaging requirements for oral prescription drugs continue when such drugs are granted over-the-counter (OTC) status by the Food and Drug Administration.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: June 15, 2000.

Sadye E. Dunn,

Secretary.

[FR Doc. 00–15519 Filed 6–15–00; 2:27 am]

BILLING CODE 6355–01–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 18, 2000.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management, 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.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department? (2) Will this information be processed and used in a timely manner? (3) Is the estimate of burden accurate? (4) How might the Department enhance the quality, utility, and clarity of the information to be collected? and (5) How might the Department minimize the burden of this collection on the respondents, including through the use of information technology?

Dated: June 13, 2000.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: Revision.

Title: The Blue Ribbon Schools Program.

Frequency: One time.

Affected Public: Not-for-profit institutions; State, Local, or Tribal Government, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 515; Burden Hours: 25,750.

Abstract: The Blue Ribbon Schools award is a national school improvement strategy with a threefold purpose: (1) To identify and give public recognition to outstanding public and private schools across the nation; (2) to make available a comprehensive framework of key criteria for school effectiveness that can serve as a basis for participatory self-assessment and planning in schools; and (3) to facilitate communication and sharing of best practices within and among schools based on a common understanding of criteria related to success. The collected information will be used to determine by peer review which schools receive the award and information on their exemplary practices and policies will be made available to other schools.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346. *Please specify the complete title of the information collection when making your request.*

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her

internet address Kathy_Axt@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–15337 Filed 6–16–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management, 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 July 19, 2000.

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, N.W., Room 10235, New Executive Office Building, Washington, D.C. 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management, 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.

Dated: June 13, 2000.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Student Financial Assistance Programs

Type of Review: Revision.

Title: Student Aid Internet Gateway (SAIG) Enrollment Document.

Frequency: On occasion.

Affected Public: Individuals or household; Not-for-profit institutions; Federal Government; State, local, or Tribal government, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 4,660;

Burden Hours: 2,151.

Abstract: The Student Aid Internet Gateway (SAIG) Enrollment Form 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 recieve and transmit, view and update student financial aid data. The Department will use this information on the enrollment form to assign customers a Title IV WAN ID and associate Title IV services selected by the customer.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346. *Please specify the complete title of the information collection when making your request.*

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at (202) 708–9266 or via his internet address Joe_Schubart@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–15338 Filed 6–16–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research; Notice of Funding Priorities; Correction

AGENCY: Department of Education.

ACTION: Notice of Final Funding Priorities for Fiscal Years 2000–2001 for New Awards for the Alternative Financing Program, and the Alternative Financing Technical Assistance Program, both authorized under Title III of the Assistive Technology Act of 1998; correction

SUMMARY: On June 5, 2000 a Notice of Final Funding Priorities for Fiscal Years 2000–2001 for New Awards for the Alternative Financing Program, and the Alternative Financing Technical Assistance Program, both authorized under Title III of the Assistive Technology Act of 1998 was published in the **Federal Register** (65 FR 35768)(FR Doc. 00–13945). This document corrects paragraph (h) of Priority 1: Alternative Financing Program, on page 35770, first column.

Correction

Paragraph (h) is corrected to read as follows:

(h) The State must provide an assurance that the State will supplement and not supplant other Federal, State, and local public funds expended to provide alternative financing mechanisms including any currently operating AFP in the State. The State must use new State-level funds to match the Federal share. The State may not use existing spending, such as Title I ATAct funds, that are used to support an existing AFP program to match the Federal grant.

DATES: These priorities take effect on August 4, 2000.

FOR FURTHER INFORMATION CONTACT: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 3414, Switzer Building, Washington, D.C. (20202–2645. Telephone: (202) 205–5880. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–4475. Internet: *Donna_Nangle@ed.gov.*

Individuals with disabilities may obtain this document in an alternate format (*e.g.,* Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION:

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 Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use PDF you must have Adobe Acrobat Reader, which is available free at either of the previous sites. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, D.C., area at (202) 512–1530.

Note: The official version of this 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.gov/nara/index.html*.

(Catalog of Federal Domestic Assistance Number 84.224C, Assistive Technology Act Alternative Loan Financing, Title III)

Program Authority: 29 U.S.C. 3051–3058.

Dated: June 14, 2000.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 00–15375 Filed 6–16–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2731]

Central Vermont Public Service Corporation; Notice of Authorization for Continued Project Operation

June 13, 2000.

On May 27, 1998, Central Vermont Public Service Corporation, licensee for the Weybridge Project No. 2731, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 2731 is located on Otter Creek in Addison County, Vermont.

The license for Project No. 2731 was issued for a period ending May 31, 2000. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in Section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of Section 15 of the FPA, then, based on Section 9(b) of the Administrative Procedure Act, U.S.C. 558(c), and as set forth at 18 CFR 16.21(a)(2000), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b)(2000), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to Section 15 of the FPA, notice is hereby given that an annual license for Project No. 2731 is issued to Central Vermont Public Service Corporation for a period effective June 1, 2000, through May 31, 2001, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before May 31, 2001, notice is hereby given that, pursuant to 18 CFR 16.18(c)(2000), an annual license under Section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to Section 15 of the FPA, notice is hereby given that Central Vermont Public Service Corporation is authorized to continue operation of the Weybridge Project No. 2731 until such time as the Commission acts on its application for subsequent license.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–15357 Filed 6–16–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CPOO–51–000 and CPOO–51–001

East Tennessee Natural Gas Company; Notice of Site Visit

June 13, 2000.

On June 19, 20, and 21, 2000, the staff of the Office of Energy Projects will be conducting an environmental site visit of East Tennessee Natural Gas Company's Rocky Top Expansion Project in Wythe, Smyth, and Washington Counties, Virginia and Greene, Roane, McMinn, Morgan, Overton, Fentress, and Hamilton Counties, Tennessee. All parties may attend. Those planning to attend must provide their own transportation.

For further information about where the site inspection will begin, please contact Paul McKee at (202) 208–1088.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–15351 Filed 6–16–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2047]

Erie Boulevard Hydropower, L.P.; Notice of Authorization for Continued Project Operation

June 13, 2000.

On June 23, 1998, Niagara Mohawk Power Corporation, licensee for the Stewarts Bridge Project No. 2047, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. In an Order dated July 26, 1999, the Commission transferred the license and substituted Erie Boulevard Hydropower, L.P. for Niagara Mohawk Power Corporation as the applicant in the pending relicensing proceeding. Project No. 2047 is located on the Sacandaga River in Saratoga County, New York.

The license for Project No. 2047 was issued for a period ending May 31, 2000. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in Section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of Section 15 of the FPA, then, based on Section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a)(2000), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b)(2000), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to Section 15 of the FPA, notice is hereby given that an annual license for Project No. 2047 is issued to Erie Boulevard Hydropwer, L.P. for a period effective June 1, 2000, through May 31, 2001, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before May 31, 2001, notice is hereby given that, pursuant to 18 CFR 16.18(c)(2000), an annual license under Section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to Section 15 of the FPA, notice is hereby given that Erie Boulevard Hydropower, L.P. is authorized to continue operation of the Stewarts Bridge Project No. 2047 until such time as the Commission acts on its application for subsequent license.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–15353 Filed 6–16–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2651]

Indiana Michigan Power Company; Notice of Authorization for Continued Project Operation

June 13, 2000.

On May 19, 1998, Indiana Michigan Power Company, licensee for the Elkhart Project No. 2651, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 2651 is located on the St. Joseph River in Elkhart County, Indiana.

The license for Project No. 2651 was issued for a period ending May 31, 2000. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in Section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of Section 15 of the FPA, then, based on Section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a)(2000), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b)(2000), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to Section 15 of the FPA, notice is hereby given that an annual license for Project No. 2651 is issued to Indiana Michigan Power Company for a period effective June 1, 2000, through May 31, 2000, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before May 31, 2001, notice is hereby given that, pursuant to 18 CFR 16.18(c)(2000), an annual license under Section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to Section 15 of the FPA, notice is hereby given that Indiana Michigan Power Company is authorized to continue operation of the Elkhart Project No. 2651 until such time as the Commission acts on its application for subsequent license.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–15352 Filed 6–16–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL00–82–000]

Niagara Mohawk Energy Marketing, Inc., Complainant, v. New York Independent System Operator, Respondent; Notice of Filing

June 13, 2000.

Take notice that on June 12, 2000, Niagara Mohawk Energy Marketing, Inc. (NMEM), tendered for filing a complaint pursuant to Section 205 of the Federal Power Act against the New York Independent System Operator (NYISO) alleging that the NYISO has unlawfully denied NMEM transmission service in connection with exports of power from the New York Control Area. NMEM alleges the denial of service was the result of a flaw in the NYISO's Security Constrained Unit Commitment (SCUC) scheduling system and that the NYISO's current plans for addressing flaws in its scheduling software do not address the SCUC problem that cause NMEM's export transactions to be rejected. NMEM alleges it has suffered monetary damages to date as a result of this problem and that NMEM and other transmission customers face the potential for very significant damages during the upcoming summer period. Accordingly, NMEM requests fast track processing of its complaint and the imposition of a stay pending final Commission action on NMEM's Complaint.

Copies of the filing were upon the NYISO and other interested parties.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before June 19, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Answer to the complaint shall be due on or before June 19, 2000.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–15350 Filed 6–16–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC00–83–001]

Potomac Edison Company, Allegheny Energy Supply Company, L.L.C., PE Transferring Agent, L.L.C., [To be Named], L.L.C., and Green Valley Hydro, LLC; Notice of Filing

June 13, 2000.

Take notice that on June 8, 2000, Potomac Edison Company (Potomac),

Allegheny Energy Supply Company, L.L.C. (AE Supply), PE Transferring Agent, L.L.C., [To be named], L.L.C., and Green Valley Hydro, LLC (Green Valley), (collectively, Applicants) tendered for filing an amendment to their April 26, 2000, application in this proceeding. In the amendment, Applicants request Commission authorization to permit Potomac to transfer the following assets to AE Supply: (1) The shares of jurisdictional step-up transformers allocable to Potomac's Maryland, West Virginia and Virginia service areas (excluding Potomac's Virginia hydroelectric assets); (2) securities evidencing Potomac's ownership share of Allegheny Generating Company; (3) certain wholesale power purchase and supply agreements, including those jurisdictional agreements Potomac may enter into between the date of the Application and the date of the proposed corporate reorganization; and (4) Potomac's pollution control and solid waste bonds associated with the transferred generating assets. The amendment requests authorization to transfer jurisdictional transmission facilities associated with Potomac's Virginia hydro electric facilities to Green Valley.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before June 23, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–15354 Filed 6–16–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–1–001]

TransEnergie U.S. Ltd.; Notice of Filing

June 13, 2000.

Take notice that on June 9, 2000, TransEnergie U.S. Ltd. (TransEnergie US), tendered for filing details of its open season plans pursuant to the Commission's June 1, 2000, and request for waiver of the Commission's prior notice requirements.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, 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). All such motions and protests should be filed on or before June 23, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–15356 Filed 6–16–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–2572–000]

Western Resources, Inc. and Kansas Gas and Electric Company; Notice of Filing

June 13, 2000.

Take notice that on May 23, 2000, Western Resources, Inc., tendered for filing notice that effective June 1, 2000 Exhibit D designated as Supplement No. 28 to Kansas Gas and Electric Company's FERC Electric Rate Schedule No. 183 (Electric Power, Transmission and Service Contract between Kansas Gas and Electric Company and Kansas Electric Power Cooperative, Inc., dated May 26, 1993) is to be canceled.

Notice of the proposed cancellation has been served upon KEPCo and the Kansas Corporation Commission.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before June 23, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–15355 Filed 6–16–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES00–43–000, et al.]

PJM Interconnection, L.L.C., et al.; Electric Rate and Corporate Regulation Filings

June 12, 2000.

Take notice that the following filings have been made with the Commission:

1. PJM Interconnection, L.L.C.

[Docket No. ES00–43–000]

Take notice that on June 7, 2000, PJM Interconnection, L.L.C., tendered for filing an application pursuant to section 204 of the Federal Power Act seeking authorization to issue a secured promissory note in the amount of $75 million for a term credit facility and an unsecured promissory note in the amount of up to $15 million for a revolving line of credit.

Comment date: July 3, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. Hoosier Energy Rural Electric Cooperative, Inc.

[Docket No. NJ00–4–000]

Take notice that on June 5, 2000, Hoosier Energy Rural Electric Cooperative, Inc. (Hoosier), tendered for

filing in the above-referenced docket modifications to the charges it collects for Energy Imbalance Service pursuant to Schedule 4 of its reciprocity open access transmission tariff.

Comment date: June 26, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. Louisville Gas and Electric Company/ Kentucky Utilities Company

[Docket No. ER00–2722–000]

Take notice that on June 6, 2000, Louisville Gas and Electric Company (LG&E)/Kentucky Utilities (KU) (hereinafter Companies), tendered for filing executed unilateral Service Sales Agreement between Companies and Tenaska Energy Services Co. under the Companies' Rate Schedule MBSS.

Comment date: June 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. Amerada Hess Corporation

[Docket No. ER00–2724–000]

Take notice that on June 6, 2000, Amerada Hess Corporation (AHC), tendered for filing with the Federal Energy Regulatory Commission a letter approving its membership in the Western Systems Power Pool (WSPP).

AHC requests that the Commission allow its membership to be effective on June 7, 2000.

Comment date: June 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. Southwest Power Pool, Inc.

[Docket No. ER00–2725–000]

Take notice that on June 6, 2000, Southwest Power Pool, Inc. (SPP), tendered for filing executed service agreements for Firm Point-to-Point Transmission Service, Non-Firm Point-to-Point Transmission and Loss Compensation Service with MidAmerican Energy Company (the Transmission Customer).

Copies of this filing were served upon the Transmission Customer.

Comment date: June 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. Western Resources, Inc.

[Docket No. ER00–2729–000]

Take notice that on June 6, 2000, Western Resources, Inc., tendered for filing a letter stating that it is adopting the NERC revisions to its TLR procedures approved by the Commission on May 8, 2000 in Docket No. ER00–1666–000, and that therefore Western Resources' FERC Electric Tariff, First Revised Original Volume No. 5 shall be considered so modified to reflect the revisions described in the Commission's order.

The effective date of this modification shall be May 7, 2000.

A copy of this letter has been served upon the Kansas Corporation Commission.

Comment date: June 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. Dayton Power and Light Company

[Docket No. ER00–2730–000]

Take notice that on June 6, 2000, the Dayton Power and Light Company (Dayton), on tendered for filing an amendment to its Open Access Transmission Tariff adopting NERC's TLR procedures.

Comment date: June 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. Virginia Electric and Power Company

[Docket No. ER00–2731–000]

Take notice that on June 6, 2000, Virginia Electric and Power Company (Virginia Power), tendered for filing an unexecuted Service Agreement for Firm Point-to-Point Transmission Service by Virginia Electric and Power Company to PJM Interconnection, LLC and an unexecuted Service Agreement for Non-Firm Point-to-Point Transmission Service by Virginia Electric and Power Company to PJM Interconnection, LLC.

The foregoing Service Agreements are tendered for filing under the Open Access Transmission Tariff to Eligible Purchasers dated July 14, 1997. Under the tendered Service Agreements, Virginia Power will provide point-to-point service to the Transmission Customer under the rates, terms and conditions of the Open Access Transmission Tariff.

Virginia Power requests an effective date of May 8, 2000, the date service was first provided to the customer. Upon receipt from the customer, Virginia Power will file the executed versions of these agreements with the Commission.

Copies of the filing were served upon PJM Interconnection, LLC, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: June 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. Sierra Pacific Power Company

[Docket No. ER00–2732–000]

Take notice that on June 6, 2000, Sierra Pacific Power Company (Sierra), tendered for filing an executed Service Agreement (Service Agreement) with Southern Company Energy Marketing, L.P., for Short-Term Firm Transmission Service under Sierra Pacific Resources Operating Companies, FERC Electric Tariff, Original Volume No. 1, Open Access Transmission Tariff (Tariff).

Sierra filed the executed Service Agreement with the Commission in compliance with section 13.4 of the Tariff and applicable Commission regulations. Sierra also submitted Original Sheet No. 173A (Attachment E) to the Tariff, which is an updated list of all current subscribers.

Sierra requests waiver of the Commission's notice requirements to permit and effective date of June 7, 2000 for Attachment E, and to allow the Service Agreements to become effective according to their terms.

Copies of this filing were served upon the Public Utilities Commission of Nevada, the Public Utilities Commission of California and all interested parties.

Comment date: June 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. New England Power Company

[Docket No. ER00–2733–000]

Take notice that on June 6, 2000, New England Power Company (NEP), tendered for filing a notice that it was adopting the Transmission Loading Relief procedures accepted by the Commission in North American Reliability Council, 91 FERC ¶ 61,122 (2000), and that NEP's open access transmission tariff— New England Power Company, FERC Electric Tariff, Original Volume No. 9—should be considered so modified.

Copies of said filing have been served upon all parties to this proceeding.

Comment date: June 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Kansas City Power & Light Company

[Docket No. ER00–2734–000]

Take notice that on June 6, 2000, Kansas City Power & Light Company (KCPL), tendered for filing notice to the commission that it would adopt the revised TLR procedures of the commissions May 8, 2000 order for transactions under its tariff. Additionally, KCPL will participate in SPP and MAPP TLR procedures.

Comment date: June 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Entergy Nuclear FitzPatrick, LLC

[Docket No. ER00–2738–000]

Take notice that on June 7, 2000, Entergy Nuclear FitzPatrick, LLC (ENF)

tendered for filing an application for authorization to sell wholesale power at market-based rates pursuant to section 205 of the Federal Power Act. ENF also requests that the Commission accept for filing certain long term-power sales agreements for the sale of power from ENF to the New York Power Authority (NYPA) as stand-alone rate schedules to ENF's proposed market rate tariff.

Copies of this filing have been served on the New York Public Service Commission, Arkansas Public Service Commission, Mississippi Public Service Commission, Louisiana Public Service Commission, Texas Public Utility Commission, Council of the City of New Orleans and NYPA.

Comment date: June 28, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. Virginia Electric and Power Company

[Docket No. ER00–2739–000]

Take notice that on June 7, 2000, Virginia Electric and Power Company (Virginia Power), tendered for filing Virginia Electric and Power Company FERC Electric Tariff, Second Revised Volume No. 5 (Revised OATT) that contains the revised Transmission Loading Relief (TLR) procedures promulgated by the North American Electric Reliability Council (NERC).

Virginia Power has requested that the revised TLR procedures become effective on March 1, 2000 and the remainder of the Revised OATT become effective June 7, 2000, the date of filing.

Comment date: June 28, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. Mid-Continent Area Power Pool

[Docket No. ER00–2742–000]

Take notice that on June 7, 2000, the Mid-Continent Area Power Pool (MAPP), on behalf of its public utility members, tendered for filing service agreements under MAPP Schedule R with Basin Electric Power Cooperative; Cargill-Alliant, LLC; Central Iowa Power Cooperative; Cinergy Services, Inc.; Consolidated Water Power Company; Coral Power, L.L.C.; Corn Belt Power Cooperative; Dairyland Power Cooperative; Enron Power Marketing, Inc.; Entergy Power Marketing Corp.; Gen-Sys Energy; Great River Energy; Hastings Utilities; Heartland Consumers Power District; IDACORP Energy; Koch Energy Trading, Inc.; Lincoln Electric System; Madison Gas and Electric Company; Manitoba Hydro; MidAmerican Energy Company; Minnesota Municipal Power Agency; Minnesota Municipal Utilities Association; Minnesota Power; Minnkota Power Cooperative, Inc.; Missouri River Energy Services; Municipal Energy Agency of Nebraska; OTP Wholesale Marketing; PacifiCorp; PG&E Energy Trading-Power, L.P.; Public Service Company of Colorado; Reliant Energy Services; Rochester Public Utilities; Sonat Power Marketing, L.P.; Southern MN Municipal Power Agency; Southwestern Public Service Company; St. Joseph Light and Power; Sunflower Electric Power Corp.; Tenaska Power Services; The Energy Authority, Inc.; U.S. Energy Commodities Services; Western Area Power Administration; Western Resources; Wisconsin Public Power, Inc. System; Wisconsin Public Service Corporation; and Wood County Municipals.

Comment date: June 28, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. Florida Power Corporation

[Docket No. ER00–2743–000]

Take notice that on June 7, 2000, Florida Power Corporation (Florida Power), tendered for filing a notice of adoption of the revised NERC Transmission Loading Relief (TLR) procedures for its open access transmission tariff (OATT). The Commission accepted the revised NERC TLR procedures in North American Electric Reliability Council, 91 FERC ¶ 61,122 (2000).

Florida Power requests a March 1, 2000 effective date.

Copies of the filing were served on Florida Power's OATT customers and the State Commissions of Florida, Georgia and South Carolina.

Comment date: June 28, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. New England Power Pool and ISO New England Inc.

[Docket No. ER00–2744–000]

Take notice that on June 7, 2000, the New England Power Pool (NEPOOL) and ISO New England Inc., tendered for filing a joint notification as directed by the Commission in its Order in Docket No. ER00–1666–000 on May 8, 2000 at 91 FERC ¶ 61,122 that the Commission should consider the NEPOOL Open Access Transmission Tariff as modified by the revised North American Electric Reliability Council Transmission Loading Relief Procedures accepted for filing by that Order.

Copies of the filing have been provided to the NEPOOL participants and the Governors and Utility Regulatory Agencies of the six New England States.

Comment date: June 28, 2000, in accordance with Standard Paragraph E at the end of this notice.

17. American Electric Power Service Corporation

[Docket No. ER00–2745–000]

Take notice that on June 7, 2000, American Electric Power Service Corporation (AEP), tendered for filing a notice of adoption of the revised NERC Transmission Loading Relief (TLR) procedures for its open access transmission tariff (OATT). The Commission accepted the revised NERC TLR procedures in North American Electric Reliability Council, 91 FERC ¶ 61,122 (2000).

AEP requests a March 1, 2000 effective date.

Copies of the filing were served on AEP's OATT customers and the State Commissions of Ohio, Michigan, Indiana, Kentucky, Tennessee, West Virginia and Virginia.

Comment date: June 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

18. Commonwealth Edison Company Commonwealth Edison Company of Indiana

[Docket No. ER00–2746–000]

Take notice that on June 7, 2000, Commonwealth Edison Company and Commonwealth Edison Company of Indiana (collective ComEd), tendered for filing notice, in accordance with the Federal Energy Regulatory Commission's May 8, 2000 ''Order Accepting Filing'' issued in Docket No. ER00–1666–000, 91 FERC ¶ 61,122 (2000) (May 8, 2000 Order), that ComEd's Open Access Transmission Tariff shall be considered modified by adopting the North American Electric Reliability Council's Transmission Loading Relief Procedures accepted by the Commission in the May 8, 2000 Order.

Comment date: June 28, 2000, in accordance with Standard Paragraph E at the end of this notice.

19. WPS Resources Operating Companies

[Docket No. ER00–2747–000]

Take notice that on June 7, 2000, WPS Resources Operating Companies (WPS), tendered for filing notice of adoption of the revised NERC Transmission Loading Relief (TLR) procedures for its open access transmission tariff (OATT). The Commission accepted the revised NERC TLR procedures in North American Electric Reliability Council, 91 FERC ¶ 61,122 (2000).

WPS requests a March 1, 2000 effective date.

Copies of the filing were served on WPS's OATT customers and the State Commissions of Michigan and Wisconsin.

Comment date: June 28, 2000, in accordance with Standard Paragraph E at the end of this notice.

20. Hardee Power Partners Limited

[Docket No. ER00–2748–000]

Take notice that on June 7, 2000, Hardee Power Partners Limited (HPP), tendered for filing a service agreement with Koch Energy Trading Inc. (Koch), under HPP's market-based sales tariff.

HPP requests that the service agreement be made effective on May 8, 2000.

Copies of the filing have been served on Koch and the Florida Public Service Commission.

Comment date: June 28, 2000, in accordance with Standard Paragraph E at the end of this notice.

21. Allegheny Energy Service Corporation on Behalf of Allegheny Energy Supply Company, LLC

[Docket No. ER00–2754–000]

Take notice that on June 7, 2000, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply), tendered for filing Supplement No. 47 to add one (1) new Customer to the Market Rate Tariff under which Allegheny Energy Supply offers generation services.

Allegheny Energy Supply requests a waiver of notice requirements to make service available as of May 9, 2000 to Louisville Gas and Electric Company/Kentucky Utilities Company.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: June 28, 2000, in accordance with Standard Paragraph E at the end of this notice.

22. Central Vermont Public Service Corporation

[Docket No. ER00–2755–000]

Take notice that on June 6, 2000, Central Vermont Public Service Corporation (Central Vermont), tendered for filing a notice of adoption of the revised NERC Transmission Loading Relief (TLR) procedures for its open access transmission tariff (OATT). The Commission accepted the revised NERC TLR procedures in North American Electric Reliability Council, 91 FERC ¶ 61,122 (2000).

Central Vermont requests a March 1, 2000 effective date.

Copies of the filing were served on Central Vermont's OATT customers and the State Commissions of Vermont, New Hampshire, Massachusetts and Connecticut.

Comment date: June 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

23. Southern Indiana Gas and Electric Company

[Docket No. ER00–2756–000]

Take notice that on June 7, 2000, Southern Indiana Gas and Electric Company (SIGECO), tendered for filing the following agreement concerning the provision of electric service to Allegheny Energy Supply Company, LLC, as a umbrella service agreement under its market-based Wholesale Power Sales Tariff:

1. Wholesale Energy Service Agreement dated May 31, 2000, by and between Southern Indiana Gas and Electric Company and Allegheny Energy Supply Company, LLC.

Comment date: June 28, 2000, in accordance with Standard Paragraph E at the end of this notice.

24. Entergy Services, Inc.

[Docket No. ER00–2757–000]

Take notice that on June 7, 2000, Entergy Service, Inc., tendered for filing notice that it will adopt as part of its open access transmission tariff, the revisions to the Transmission Loading Relief procedures filed by the North American Electric Reliability Council and accepted by FERC in *North American Electric Reliability Council,* 91 FERC ¶ 61,122 (2000).

Comment date: June 28, 2000, in accordance with Standard Paragraph E at the end of this notice.

25. The Detroit Edison Company and Consumers Energy Company

[Docket No. ER00–2758–000]

Take notice that on June 7, 2000, The Detroit Edison Company (Detroit Edison) and Consumers Energy Company (Consumers), tendered for filing notice that Detroit Edison will adopt as part of its open access transmission tariff, and that Detroit Edison and Consumers will adopt as part of their joint open access transmission tariff, the revisions to the Transmission Loading Relief procedures filed by the North American Electric Reliability Council and accepted by FERC in North American Electric Reliability Council, 91 FERC ¶ 61,122 (2000).

Comment date: June 28, 2000, in accordance with Standard Paragraph E at the end of this notice.

26. Florida Power & Light Co.

[Docket No. ER00–2759–000]

Take notice that on June 6, 2000, Florida Power & Light Company tendered for filing pursuant to North American Electric Reliability Council, 91 FERC ¶ 61,122 (2000) (NERC), notice of a generic amendment to its Open Access Transmission Tariff (OATT) reflecting the North American Electric Reliability Council (NERC) revised Transmission Loading Relief (TLR) procedures accepted by the Commission in NERC.

Comment date: June 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

27. Duke Energy Corporation

[Docket No. ER00–2760–000]

Take notice that on June 7, 2000, Duke Energy Corporation (Duke), tendered for filing a compliance filing in the above-referenced docket involving the North American Electric Reliability Council's market redispatch program.

Duke states that a copy has been served on the Service List in this proceeding.

Comment date: June 28, 2000, in accordance with Standard Paragraph E at the end of this notice.

28. Alliant Energy Corporate Services, Inc.

[Docket No. ER00–2761–000]

Take notice that on June 7, 2000, Alliant Energy Corporate Services, Inc. tendered for filing on behalf of IES Utilities Inc. (IES), Interstate Power Company (IPC) and Wisconsin Power and Light Company (WPL), in response to the Commission's order dated May 8, 2000, in North American Electric Reliability Council, Docket No. ER00–1666–000 (NERC Order).

Alliant Energy Corporate Services, Inc., hereby provides notice that in accordance with the NERC Order it adopts NERC's revised Transmission Loading Relief (TLR) Procedures for Alliant Energy Corporate Services, Inc.

Accordingly, Alliant Energy Corporate Services, Inc., requests waiver of all applicable notice requirements to permit the effective date of March 1, 2000.

A copy of this filing has been served upon the Illinois Commerce Commission, the Minnesota Public Utilities Commission, the Iowa Department of Commerce, and the

Public Service Commission of Wisconsin.

Comment date: June 28, 2000, in accordance with Standard Paragraph E at the end of this notice.

29. New York Independent System Operator, Inc.

[Docket No. ER00–2762–000]

Take notice that on June 7, 2000, the New York Independent System Operator, Inc. (NYISO), tendered for filing Revisions to its Code of Conduct.

The NYISO requests an effective date of August 7, 2000 and waiver of the Commission's notice requirements.

A copy of this filing was served upon all persons who have signed the NYISO Open Access Transmission Tariff and on the electric utility regulatory agencies in New York, New Jersey and Pennsylvania.

Comment date: June 28, 2000, in accordance with Standard Paragraph E at the end of this notice.

30. Wisconsin Energy Corporation Operating Companies

[Docket No. ER00–2763–000]

Take notice that on June 7, 2000, Wisconsin Energy Corporation Operating Companies (Wisconsin Energy), tendered for filing Wisconsin Energy Corporation Operating Companies FERC Electric Tariff, First Revised Volume No. 1 (Revised OATT) that replaces the existing Transmission Loading Relief (TLR) in the tariff with the revised TLR procedures promulgated by the North American Electric Reliability Council.

Wisconsin Energy has requested that the revised TLR procedures become effective on March 1, 2000 and the remainder of the Revised OATT become effective June 7, 2000, the date of filing.

Comment date: June 28, 2000, in accordance with Standard Paragraph E at the end of this notice.

31. SEI Wisconsin, L.L.C.

[Docket No. ER00–2764–000]

Take notice that on June 7, 2000, SEI Wisconsin, L.L.C. (SEI Wisconsin), tendered for filing with the Federal Energy Regulatory Commission a long-term service agreement for sales under SEI Wisconsin's Market Rate Tariff, which was accepted for filing in Docket No. ER99–669–000. The service agreement is the ''Power Purchase Agreement dated August 28, 1998, between SEI Wisconsin, L.L.C. and Wisconsin Electric Power Company.''

Comment date: June 28, 2000, 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 the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions 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. 00–15363 Filed 6–16–00; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6718–5]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Indoor Air Quality Practices in Large Buildings Survey

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Indoor Air Quality Practices in Large Buildings Survey. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 19, 2000.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Sandy Farmer at EPA by phone at (202) 260–2740, by email at *farmer.sandy@epamail.epa.gov,* or download off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No. 1917.01. For technical questions about the ICR contact Lee Salmon at EPA by phone at (202) 564–9451.

SUPPLEMENTARY INFORMATION: *Title:* Indoor Air Quality Practices in Large Buildings Survey, EPA ICR No. 1917.01). This is a new collection.

Abstract: As part of its authorization under Title IV of the SARA, 1986, EPA has been working to promote more effective approaches for identifying and solving indoor air quality (IAQ) problems and has developed guidance for that purpose.

The Indoor Air Quality Practices in Large Buildings Survey will allow EPA to determine the extent to which elements of its guidance have been incorporated into U.S. building management. These data are essential for measuring the effectiveness of EPA's efforts to encourage good IAQ-management practices in large buildings against the Agency's established Government Performance Review Act (GPRA) goal. By the year 2005, EPA wishes to demonstrate a five percent increase in the number of large buildings (defined as over 50,000 square feet) that use IAQ-management practices.

To determine its success in achieving this goal, EPA intends to survey owners and managers of commercial and Federally-owned large buildings on a variety of IAQ practices. The Agency will mail a survey and instructions for completing it to approximately 4,150 building owners and managers. The initial survey will establish a baseline for the use rate of IAQ-related practices recommended in EPA's guidance. EPA intends to conduct another survey in 2005 to assess changes in the use of these practices.

The Indoor Air Quality Practices in Large Buildings Survey is voluntary. EPA does not expect to receive confidential information from the large-building owners or managers participating in the Survey. However, if a respondent does consider the information submitted to be of a proprietary nature, EPA will assure its confidentiality based on the provisions of 40 CFR part 2, subpart B, ''Confidentiality of Business 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. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on

February 4, 2000; one comment was received.

Burden Statement: The annual public reporting and record-keeping burden for this collection of information is estimated to average 1.8 hours per response. 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.

Respondents/Affected Entities: owners and managers of buildings of 50,000 sq. ft.

Estimated Number of Respondents: 1,796.

Frequency of Response: This is a one time action.

Estimated Total Annual Hour Burden: 1,078 hours.

Estimated Total Annualized Capital and O&M Cost Burden: $0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1917.01 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Environmental Information, Collection Strategies Division (2822), 1200 Pennsylvania Avenue, NW., Washington, DC 20460;

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

Dated: June 6, 2000.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 00–15398 Filed 6–16–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6718–6]

National Advisory Council on Environmental Policy and Technology; Notice of Charter Renewal

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of charter renewal.

The Charter for the Environmental Protection Agency's National Advisory Council for Environmental Policy and Technology (NACEPT) will be renewed for an additional two-year period, as a necessary committee which is in the public interest, in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App 9(c). The purpose of NACEPT is to provide advice and recommendations to the Administrator of EPA on issues associated with environmental management and policy.

It is determined that NACEPT is in the public interest in connection with the performance of duties imposed on the Agency by law.

Inquiries may be directed to Gwendolyn Whitt, U.S. EPA, (mail code 1601–A), 1200 Pennsylvania Avenue, NW, Washington, D.C. 20460.

Dated: March 28, 2000.

Gordon Schisler,

Acting Director, Office of Cooperative Environmental Management.

[FR Doc. 00–15397 Filed 6–16–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6716–6]

Proposed Prospective Purchaser Agreement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act for the Vacant Lot Site; North Chicago, Illinois

AGENCY: Environmental Protection Agency (''EPA'').

ACTION: Notice; request for public comment on proposed prospective purchaser agreement.

SUMMARY: In accordance with the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9601 *et seq.*, and the authority of the Attorney General of the United States to compromise and settle claims of the United States as delegated, notice is hereby given of a proposed prospective purchaser agreement concerning the Vacant Lot site at the northeast corner of Commonwealth Avenue and Martin Luther King Drive, North Chicago, Illinois. The agreement, in conjunction with an agreement with the present property owners, requires that the purchase price of $35,000 be paid to the Hazardous Substance Superfund. The agreement includes a covenant not to sue BREMS Realty, L.L.C., which would purchase the property, and EMCO Chemical Distributors, Inc., which would lease the property, under sections 106 and 107(a) of CERCLA, 42 U.S.C. 9606 and 9607(a), and contribution protection for BREMS Realty, L.L.C. and EMCO Chemical Distributors, Inc. under section 113(f)(2) of CERCLA, 42 U.S.C. 9613(f)(2).

For thirty days following the date of publication of this notice, the EPA will receive written comments relating to this proposed agreement. EPA will consider all comments received and may decide not to enter this proposed agreement if comments disclose facts or considerations which indicate that the proposed agreement is inappropriate, improper or inadequate.

DATES: Comments on the proposed agreement must be received by EPA on or before July 19, 2000.

ADDRESSES: Comments should be addressed to the Docket Clerk, U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604–3590, and should refer to: In the Matter of Vacant Lot Site, North Chicago, Illinois, U.S. EPA Docket No. V–W–00C–93.

FOR FURTHER INFORMATION CONTACT: Thomas J. Krueger, U.S. Environmental Protection Agency, Office of Regional Counsel, C–14J, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590, (312) 886–0562.

A copy of the proposed administrative settlement agreement may be obtained in person or by mail from the EPA's Region 5 Office of Regional Counsel, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590. Additional background information relating to the settlement is available for review at the EPA's Region 5 Office of Regional Counsel.

Authority: The Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. 9601–9675.

Bruce Sypniewski,

Acting Director, Superfund Division, Region 5.

[FR Doc. 00–15395 Filed 6–16–00; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6716–5]

Proposed Settlement Under Sections 122(g)(1)(B) and 122(g)(4) of the Comprehensive Environmental Response, Compensation, and Liability Act; Land Trust No. 40966, Chicago Title and Trust Company, as Trustee; Northern Trust Company, as Trustee for the John F. Stack Residuary Trust; Mary Stack; Dorothy Stack Spaulding; John Stack, Jr.; Robert Stack and Eugene Stack

AGENCY: Environmental Protection Agency (EPA).

ACTION: Request for public comment.

SUMMARY: In accordance with section 122(i)(1) of the Comprehensive Environmental Response, Compensation and Liability Act of 1984, as amended (CERCLA), notice is hereby given of a proposed administrative settlement concerning the Vacant Lot hazardous waste site at the northeast corner of Commonwealth Avenue and Martin Luther King Drive in North Chicago, Illinois (Site).

The agreement was proposed by EPA Region 5 on January 12, 1998. Subject to review by the public pursuant to this Notice, the agreement has been approved by the United States Department of Justice. Land Trust No. 40966, Chicago Title and Trust Company, as trustee; Northern Trust Company, as trustee for the John F. Stack Residuary Trust; Mary Stack; Dorothy Stack Spaulding; John Stack, Jr.; Robert Stack and Eugene Stack have executed binding certifications of their consent to participate in the settlement.

EPA is entering into this agreement under the authority of section 122(g) and 107 of CERCLA. Section 122(g) authorizes settlements with *de minimis* parties to allow them to resolve their liabilities at Superfund sites without incurring substantial transaction costs. Under the proposed settlement, Site property will be transferred to BREMS Realty, L.L.C. (which has entered into a proposed prospective purchaser agreement with EPA). The sale proceeds of $35,000 would be paid directly to EPA and applied to its outstanding response costs of approximately 3.1 million at the Site. These settling parties would agree not to sue the United States for any claims arising out of the response actions taken at the Vacant Lot site. In exchange for that covenant and in consideration of the payment to be received, EPA would provide a covenant not to sue the settling parties and the contribution protection provided by Sections 113(f)(2) and 122(g)(5) of CERCLA, 42 U.S.C. 9613(f)(2) and 9622(g)(5). EPA has determined that these parties are owners or have potential owernship interests at the Site and that they did not conduct or permit the generation, transportation, storage, treatment, or disposal of any hazardous substances at the site, and did not contribute to the release or threat of release of a hazardous substance at the site through any act or omission.

The Environmental Protection Agency will receive written comments relating to this agreement for 30 days from the date of publication of this notice. EPA will consider all comments received and may decide not to enter this proposed agreement if comments disclose facts or considerations which indicate that the proposed agreement is inappropriate, improper or inadequate.

DATES: Comments must be provided on or before July 19, 2000.

ADDRESSES: Comments should be addressed to the Docket Clerk, U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590, and should refer to: In Re Vacant Lot Site, North Chicago, Illinois, U.S. EPA Docket No. V–W–00C–94.

FOR FURTHER INFORMATION CONTACT: Thomas J. Krueger, U.S. Environmental Protection Agency, Office of Regional Counsel, C–14J, 77 West Jackson Boulevard, Chicago, Illinois, 60604–3590, (312) 886–0562.

A copy of the proposed administrative settlement agreement may be obtained in person or by mail from the EPA's Region 5 Office of Regional Counsel, 77 West Jackson Boulevard, Chicago Illinois 60604–3590. Additional background information relating to the settlement is available for review at the EPA's Region 5 Office of Regional Counsel.

Authority: The Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. 9601–9675.

Bruce Sypniewski,

Acting Director, Superfund Division.

[FR Doc. 00–15396 Filed 6–16–00; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6718–7]

Proposed CERCLA Administrative Cost Recovery Settlement; West Site/ Hows Corner Superfund Site, Plymouth, Maine

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement for recovery of past response costs concerning the West Site/Hows Corner Superfund Site, Plymouth, Maine with the Hows Corner/West Site RI/FS PRP Group. The settlement provides a $300,000 credit towards settlement of past costs for the RI/FS PRP Group, in exchange for the PRP Group's performance of a Remedial Investigation/Feasibility Study at the Site. For thirty (30) days following the date of publication of this document, the United States Environmental Protection Agency will receive written comments relating to the settlement. The United States Environmental Protection Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The United States Environmental Protection Agency's response to any comments received will be available for public inspection at U.S. Environmental Protection Agency, EPA-New England, One Congress Street, Suite 1100, Boston, MA 02114.

DATES: Comments must be submitted on or before July 19, 2000.

ADDRESSES: The proposed settlement is available for public inspection at U.S. Environmental Protection Agency, EPA-New England, One Congress Street, Suite 1100, Boston, MA 02114. A copy of the proposed settlement may be obtained from Barbara O'Toole, Responsible Party Coordinator, U.S. EPA, Region 1, One Congress Street, Suite 1100 (HBS), Boston, MA 02114, (617) 918–1408. Comments should reference the West Site/Hows Corner Superfund Site, Plymouth, Maine and EPA Docket No. CERCLA 1–2000–005 and should be addressed to Barbara O'Toole, Responsible Party Coordinator,

U.S. EPA, EPA-New England, One Congress Street, Suite 1100 (HBS), Boston, MA 02114.

FOR FURTHER INFORMATION CONTACT: Barbara O'Toole, Responsible Party Coordinator, U.S. EPA, EPA-New England, One Congress Street, Suite 1100 (HBS), Boston, MA 02114, (617) 918–1408.

Dated: May 26, 2000.

Patricia L. Meaney,

Director, Office of Site Remediation and Restoration, EPA-New England.

[FR Doc. 00–15399 Filed 6–16–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–59371; FRL–6593–7]

Approval of Test Marketing Exemption for a Certain New Chemical With Restrictions and Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA has designated this application as TME–00–3. The test marketing conditions are described in the TME application and in this notice.

DATES: Approval of this TME is effective on June 13, 2000. Written comments will be received until July 5, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit III of the ''SUPPLEMENTARY INFORMATION.'' To ensure proper receipt by EPA, it is imperative that you identify the docket control number ''[OPPTS–59371]'', and the TME number ''[TME 00–3]'' in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: For general information contact: Barbara Cunningham, Director, Office of Program Management, and Evaluation, Office of Pollution Prevention and Toxics (7401), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202 554–1404; and e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: Adella Watson, New Chemicals Notice Management Branch, Chemical Control Division (7405), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 260–3752; and e-mail address: watson.adella@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

This action is directed in particular to the chemical manufacturer and/or importer who submitted the TME to EPA. This action may, however, be of interest to the public in general. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected 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.

II. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

A. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, 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/.

B. *In person*. The Agency has established an official record for this action under docket control number OPPTS–59371. 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 any 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 information claimed as 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 the TSCA Nonconfidential Information Center (NCIC), North East Mall (NEM) Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Center is (202) 260–7099.

III. How and to Whom Do I Submit Comments?

Notice of receipt of this application was not published in advance of approval. Therefore an oppurtunity to submit comments is being offered at this time. 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 OPPTS–59371 in the subject line on the first page of your response. The complete nonconfidential document is available in the TSCA NCIC at the above address in Unit II. B. between noon and 4 p.m., Monday through Friday, excluding legal holidays. EPA may modify or revoke the test marketing exemption if comments are received which cast significant doubt on its finding that the test marketing activities will not present an unreasonable risk of injury.

A. *By mail.* Submit your comments to: Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

B. *In person or by courier*. Deliver your comments to: OPPT Document Control Office (DCO) in East Tower Rm. G–099, Waterside Mall, 401 M St., SW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 260–7093.

C. *Electronically*. You may submit your comments electronically by e-mail to: ''oppt.ncic@epa.gov,'' or mail your computer disk to the address identified above. 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 disks in WordPerfect 6.1/8.1 or ASCII file format. All comments in electronic form must be identified by docket control number OPPTS–59370. Electronic comments may also be filed online at many Federal Depository Libraries

IV. How Should I Handle CBI 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 technical person identified under ''FOR FURTHER INFORMATION CONTACT.''

V. What Should I Consider as I Prepare My Comments for EPA?

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 copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the proposed rule or collection activity.
7. Make sure to submit your comments by the deadline in this document.
8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

VI. What is the Agency's Authority for Taking this Action?

Section 5(h)(1) of TSCA and 40 CFR 720.38 authorize EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes, if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present an unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present an unreasonable risk of injury.

VII. What Action is the Agency Taking?

EPA has approved the above-referenced TME. EPA has determined that test marketing the new chemical substance, under the conditions set out in the TME application and in this notice, will not present any unreasonable risk of injury to health or the environment.

VIII. What Restrictions Apply to this TME?

All conditions and restrictions described in the TME application and in this notice must be met. The test market time period, production volume, number of customers, and use must not exceed specifications in the application and this notice. A bill of lading accompanying each shipment must state that the use of the substance is restricted to that approved in the TME. Further restrictions are described in sections XI and X below.

TME–00–3.

Date of Receipt: May 3, 2000. The extended comment period will close July 5, 2000.

Applicant: Westvaco Corporation

Chemical: Fatty acids, tall-oil, reaction products with castor oil and substituted amines.

Use: asphalt emulsifier.

Production Volume: CBI

Number of Customers: 1

Test Marketing Period: 12 months, commencing on first day of commercial manufacture.

IX. What Personal Protective Equipment is Required for this Chemical?

During manufacturing, processing, and use of the substance at any site controlled by the applicant, any person under the control of the applicant, including employees and contractors, who may be dermally exposed to the substance shall use:

a. Gloves determined by the applicant to be impervious to the substance under the substance under the conditions of exposure, including the duration of exposure. The applicant shall make this determination either by testing the gloves under the conditions of exposure or by evaluating the specifications provided by the manufacturer of the gloves. Testing or evaluation of specifications shall include consideration of permeability, penetration, and potential chemical and mechanical degradation by the PMN substance and associated chemical substances;

b. Clothing which covers any other exposed areas of the arms, legs, and torso; and

c. Chemical safety goggles or equivalent eye protection.

X. What Records must be kept for this TME?

The applicant shall maintain the following records until 5 years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. Records of the quantity of the TME substance produced and the date of manufacture.

2. Records of dates of the shipments to each customer and the quantities supplied in each shipment.

3. Copies of the bill of lading that accompanies each shipment of the TME substance.

4. Records documenting compliance with the personal protective equipment requirements, including copies of any determination that the protective gloves used by the applicant are impervious to the substance.

XI. What was EPA's Risk Assessment for this TME?

EPA identified no significant environmental concerns for the test market substance; however, human health concerns were raised for the substance. Specifically, Agency reviewers identified potential concerns for severe irritation or corrosion to the skin and eye. These concerns were mitigated due to the required use of appropriate personal protective equipment. Therefore, the test market activities will not present any unreasonable risk of injury to human health or the environment.

XII. Can EPA Change Its Decision on this TME in the Future?

Yes. The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information that comes to its attention cast significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to human health or the environment.

List of Subjects

Environmental protection, Test marketing exemptions.

Dated: June 13, 2000.

Flora Chow,

Chief, New Chemicals Notice Management Branch, Office of Pollution Prevention and Toxics.

[FR Doc. 00–15380 Filed 6–16–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–59372; FRL–6593–8]

Approval of Test Marketing Exemption for a Certain New Chemical With Restrictions and Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA has designated this application as TME–00–4. The test marketing conditions are described in the TME application and in this notice.

DATES: Approval of this TME is effective on June 13, 2000. Written comments will be received until July 5, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit III of the ''SUPPLEMENTARY INFORMATION.'' To ensure proper receipt by EPA, it is imperative that you identify the docket control number ''[OPPTS–59372]'', and the TME number ''[TME 00–4]'' in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: For general information contact: Barbara Cunningham, Director, Office of Program Management, and Evaluation, Office of Pollution Prevention and Toxics (7401), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202 554–1404; and e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: Adella Watson, New Chemicals Notice Management Branch, Chemical Control Division (7405), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 260–3752; and e-mail address: watson.adella@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

This action is directed in particular to the chemical manufacturer and/or importer who submitted the TME to EPA. This action may, however, be of interest to the public in general. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected 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.

II. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

A. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, 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/.

B. *In person*. The Agency has established an official record for this action under docket control number OPPTS–59372. 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 any 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 information claimed as 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 the TSCA Nonconfidential Information Center (NCIC), North East Mall (NEM) Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Center is (202) 260–7099.

III. How and to Whom Do I Submit Comments?

Notice of receipt of this application was not published in advance of approval. Therefore an oppurtunity to submit comments is being offered at this time. 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 OPPTS–59372 in the subject line on the first page of your response. The complete nonconfidential document is available in the TSCA NCIC at the above address in Unit II. B. between noon and 4 p.m., Monday through Friday, excluding legal holidays. EPA may modify or revoke the test marketing exemption if comments are received which cast significant doubt on its finding that the test marketing activities will not present an unreasonable risk of injury.

A. *By mail.* Submit your comments to: Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

B. *In person or by courier*. Deliver your comments to: OPPT Document Control Office (DCO) in East Tower Rm. G–099, Waterside Mall, 401 M St., SW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 260–7093.

C. *Electronically*. You may submit your comments electronically by e-mail to: ''oppt.ncic@epa.gov,'' or mail your computer disk to the address identified above. 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 disks in WordPerfect 6.1/8.1 or ASCII file format. All comments in electronic form must be identified by docket control number OPPTS–59370. Electronic comments may also be filed online at many Federal Depository Libraries.

IV. How Should I Handle CBI 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 technical person identified under ''FOR FURTHER INFORMATION CONTACT.''

V. What Should I Consider as I Prepare My Comments for EPA?

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 copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the proposed rule or collection activity.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

VI. What is the Agency's Authority for Taking this Action?

Section 5(h)(1) of TSCA and 40 CFR 720.38 authorize EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes, if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present an unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present an unreasonable risk of injury.

VII. What Action is the Agency Taking?

EPA has approved the above-referenced TME. EPA has determined that test marketing the new chemical substance, under the conditions set out in the TME application and in this notice, will not present any unreasonable risk of injury to health or the environment.

VIII. What Restrictions Apply to this TME?

All conditions and restrictions described in the TME application and in this notice must be met. The test market time period, production volume, number of customers, and use must not exceed specifications in the application and this notice. A bill of lading accompanying each shipment must state that the use of the substance is restricted to that approved in the TME. Further restrictions are described in sections IX and X below.

TME–00–4.

Date of Receipt: May 3, 2000. The extended comment period will close July 5, 2000.

Applicant: Westvaco Corporation

Chemical: Fatty acids, tall-oil, reaction products with castor oil and substituted amines, chloride salt

Use: asphalt emulsifier.

Production Volume: CBI

Number of Customers: 1

Test Marketing Period: 12 months, commencing on first day of commercial manufacture.

IX. What Personal Protective Equipment is Required for this Chemical?

During manufacturing, processing, and use of the substance at any site controlled by the applicant, any person under the control of the applicant, including employees and contractors, who may be dermally exposed to the substance shall use:

a. Gloves determined by the applicant to be impervious to the substance under the substance under the conditions of exposure, including the duration of exposure. The applicant shall make this determination either by testing the gloves under the conditions of exposure or by evaluating the specifications provided by the manufacturer of the gloves. Testing or evaluation of specifications shall include consideration of permeability, penetration, and potential chemical and mechanical degradation by the PMN substance and associated chemical substances;

b. Clothing which covers any other exposed areas of the arms, legs, and torso; and

c. Chemical safety goggles or equivalent eye protection.

X. What Records must be kept for this TME?

The applicant shall maintain the following records until 5 years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. Records of the quantity of the TME substance produced and the date of manufacture.

2. Records of dates of the shipments to each customer and the quantities supplied in each shipment.

3. Copies of the bill of lading that accompanies each shipment of the TME substance.

4. Records documenting compliance with the personal protective equipment requirements, including copies of any determination that the protective gloves used by the applicant are impervious to the substance.

XI. What was EPA's Risk Assessment for this TME?

EPA identified no significant environmental concerns for the test market substance; however, human health concerns were raised for the substance. Specifically, Agency reviewers identified potential concerns for severe irritation or corrosion to the skin and eye. These concerns were mitigated due to the required use of appropriate personal protective equipment. Therefore, the test market activities will not present any unreasonable risk of injury to human health or the environment.

XII. Can EPA Change Its Decision on this TME in the Future?

Yes. The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information that comes to its attention cast significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to human health or the environment.

List of Subjects

Environmental protection, Test marketing exemptions.

Dated: June 13, 2000.

Flora Chow,

Chief, New Chemicals Notice Management Branch, Office of Pollution Prevention and Toxics.

[FR Doc. 00–15381 Filed 6–16–00; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested.

June 9, 2000.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An

agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before August 18, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, 445 12th Street, S.W., Room 1–A804, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0935.

Title: Cable Industry Survey on Channel Capacity and Retransmission Consent.

Form Number: n/a.

Type of Review: Extension of a currently approved collection.

Respondents: Business and other for-profit entities and Individuals and households.

Number of Respondents: 16.

Estimated Time Per Response: 12 hours.

Frequency of Response: One-time filing requirement.

Total Annual Burden: 192 hours.

Total Annual Costs: $17,280.

Needs and Uses: The data collected will be used by the Commission to build a record and to determine how to proceed on the mandatory carriage issues in the pending rulemaking. The data gleaned from the survey will be incorporated in the next Report and Order in CS Docket No. 98–120.

OMB Control Number: 3060–0544.

Title: Commercial Leased Access Channels—Section 76.701.

Form Number: n/a.

Type of Review: Extension of a currently approved collection.

Respondents: Business and other for-profit entities.

Number of Respondents: 100.

Estimated Time Per Response: 8 hours.

Frequency of Response: On occasion filing requirement.

Total Annual Burden: 800 hours.

Total Annual Costs: 0.

Needs and Uses: Permitting cable operators to adopt policies regarding programming gives operators alternatives to banning broadcasts; for example, by adopting policies to rearrange broadcast times so as to accommodate adult audiences while lessening the risks of harm to children.

OMB Control Number: 3060–0780.

Title: Uniform Rate-Setting Methodology.

Form Number: n/a.

Type of Review: Extension of a currently approved collection.

Respondents: Business and other for-profit entities and State, local or tribal governments.

Number of Respondents: 160.

Estimated Time Per Response: 20 or 50 hours.

Frequency of Response: On occasion filing requirement.

Total Annual Burden: 3,500 hours.

Total Annual Costs: $900.

Needs and Uses: Uniform rates proposals will be filed with the Commission and served on all affected LFAs. The rate proposals, comments received from LFAs and replies received from cable operators will be reviewed by the Commission in considering whether the interests of subscribers will be protected under the new rate proposal.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–15376 Filed 6–16–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

June 8, 2000.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before July 19, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, DC 20554 or via the Internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0748.

Title: Section 64.1504, Disclosure Requirements for Information Services Provided Through Toll-Free Numbers.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 3,750.

Estimated Time Per Response: 2–5 hours.

Frequency of Response: Third party disclosure requirement.

Total Annual Burden: 10,500 hours.

Total Annual Cost: N/A.

Needs and Uses: Section 64.1504 incorporates in the Commission's Rules, the requirements of Sections 228(c)(7)–(10) that restrict the manner in which toll-free numbers may be used to charge telephone subscribers for information services. Common carriers must prohibit

the use of toll-free numbers in a manner that would result in the calling party being charged for information conveyed during the call, unless the calling party (1) has executed a written agreement that specifies the material terms and conditions under which the information is provided, or (2) pays for the information by means of a prepaid account, credit, debit, charge, or calling card and the information service provider includes in response to each call an introductory message disclosing specified information detailing the cost and other terms and conditions for the service. The disclosure requirements are intended to ensure that consumers know when charges will be levied for calls to toll-free numbers and are able to obtain information necessary to make informed choices about whether to purchase toll-free information services.

OMB Control No.: 3060–0749.

Title: Section 64.1509, Disclosure and Dissemination of Pay-Per-Call Information.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 25. respondents; 75 responses.

Estimated Time Per Response: 410 hours.

Frequency of Response: Third party disclosure requirement, annual and on occasion reporting requirement.

Total Annual Burden: 10,250 hours.

Total Annual Cost: N/A.

Needs and Uses: Common carriers that assign telephone numbers to pay-per-call services must disclose to all interested parties, upon request, a list of all assigned pay-per-call numbers. For each assigned number, carriers must also make available (1) a description of the pay-per-call service; (2) the total cost per minute or other fees associated with the service; and (3) the service provider's name, business address, and telephone number. In addition, carriers handling pay-per-call services must establish a toll-free number that consumers may call to receive information about pay-per-call services. Finally, the Commission requires carriers to provide statements of pay-per-call right and responsibilities to new telephone subscribers at the time service is established and, although not required by statute, to all subscribers annually.

OMB Control No.: 3060–0752.

Title: Section 64.1510, Billing Disclosure Requirements for Pay-Per-Call and Other Information Services.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 1,350.

Estimated Time Per Response: 10–40 hours.

Frequency of Response: Third party disclosure requirement and annual reporting requirement.

Total Annual Burden: 54,000 hours.

Total Annual Cost: N/A.

Needs and Uses: Under Section 64.1510, telephone bills containing charges for interstate pay-per-call and other information services must include information detailing consumers' rights and responsibilities with respect to these charges. Specifically, telephone bills carrying pay-per-call charges must include a consumer notification stating that (1) the charges are for non-communication services; (2) local and long distance telephone services may not be disconnected for failure to pay-per-call charges; (3) pay-per-call (900 number) blocking is available upon request, and (4) access to pay-per-call services may be involuntarily blocked for failure to pay-per-call charges. In addition, each call billed must show the type of service, the amount of the charge, and the date, time, and duration of the call. Finally, the bill must display a toll-free number which subscribers may call to obtain information about pay-per-call services. Similar billing disclosure requirements apply to charges for information services either billed to subscribers on a collect basis or accessed by subscribers through a toll-free number. The billing disclosure requirements are intended to ensure that telephone subscribers billed for pay-per-call or other information services are able to understand the charges levied and are informed of their rights and responsibilities with respect to payment of such charges.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–15378 Filed 6–16–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 96–511. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. Not withstanding any other provisions of law, no person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Questions concerning the OMB control numbers and expiration dates should be directed to Judy Boley, Federal Communications Commission, (202) 418–0214.

Federal Communications Commission

OMB Control No.: 3060–0939.

Expiration Date: 12/31/2000.

Title: E911—Second Memorandum Opinion and Order.

Form No.: None.

Estimated Annual Burden: 50 Burden Hours Annually, 1 hour per response; 50 .

Description: Commercial Mobile Radio Service (CMRS) carriers and Public Safety Answering Points (PSAPs) who cannot agree on the choice of Enhanced 911 transmission means and related technologies may approach the Commission to assist in reaching an accord. In order for the Commission to effectively participate in resolving differences between CMRS carriers and PSAPs, the parties will be asked to submit relevant information.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–15377 Filed 6–16–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments

must be received not later than July 3, 2000.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President), 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. Richard N. Abrams, Northfield, Illinois; to acquire additional voting shares of Surety Capital Corporation, Fort Worth, Texas, and thereby indirectly acquire additional voting shares of Surety Bank, National Association, Fort Worth, Texas.

Board of Governors of the Federal Reserve System, June 13, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–15329 Filed 6–19–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 13, 2000.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President), 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. CNB Financial Services, Inc., Berkeley Springs, West Virginia; to become a bank holding company by acquiring 100 percent of the voting shares of Citizens National Bank of Berkeley Springs, Berkeley Springs, West Virginia.

B. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President), 104 Marietta Street, N.W., Atlanta, Georgia 30303–2713:

1. Heritage Financial Holding Corporation, Decatur, Alabama; to become a bank holding company by acquiring 100 percent of the voting shares of Heritage Bank, Decatur, Alabama.

Board of Governors of the Federal Reserve System, June 13, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–15331 Filed 6–16–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo,* or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 3, 2000.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President), 411 Locust Street, St. Louis, Missouri 63166–2034:

1. Community First Financial Corporation, Plato, Missouri; to establish Community First Financial Services Agency, Plato, Missouri, and thereby engage *de novo* in providing tax preparation services, pursuant to § 225.28(b)(6)(vi) of Regulation Y; any insurance agency activity, including the sale of annuity contracts in a town of less than 5,000 in population, pursuant to § 228.28(b)(11)(iii) of Regulation Y; and in the sale of mutual funds, pursuant to § 225.28(b)(7)(i) of Regulation Y.

Board of Governors of the Federal Reserve System, June 13, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–15330 Filed 6–16–00; 8:45 am]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

Submission for OMB Review; Comment Request Child Care Subsidy Application—Provider

AGENCY: Office of Child Care, GSA.

ACTION: Notice of request for approval of a new information collection entitled Child Care Subsidy Application—Provider.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), GSA has submitted to the Office of Management and Budget (OMB) a request to review and approve a new information collection concerning Child Care Subsidy Application—Provider. An emergency review was requested by OMB and notice was published in the **Federal Register** at 65 FR 24698, April 27, 2000. OMB approved the emergency collection and assigned OMB Control No. 3090–0275.

The proposed information collection activity is for approval of the form for implementation of a GSA child care subsidy for lower income GSA employees in accordance with provisions of the Office of Personnel Management Rules and Regulations 5 CFR Part 792, Agency Use of Appropriated Funds for Lower Income Employees. The rule was published March 14, 2000. The form would verify the child care fees paid by federal employees to licensed child care providers so that providers could be paid a portion of those fees by GSA. The rule requires funds to subsidize lower income employees' child care rates be

given to child care providers rather than employees. The form will also request banking information so those child care providers can be paid via electronic funds transfer.

DATES: Submit comments on or before August 18, 2000.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: Marjorie Ashby, General Services Administration (MVP), 1800 F Street NW, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Bonnie Storm, Office of Childcare, General Services Administration, 202–208–5119.

SUPPLEMENTARY INFORMATION:

A. Purpose

The purpose of this Notice is to consult with and solicit comments from the public concerning the proposed collection of information regarding GSA child care subsidy for lower income GSA employees.

B. Annual Reporting Burden

Respondents: 50; *annual responses:* 50; *average hours per response:* .15; *burden hours:* 12.5.

Copy of Proposal: A copy of this proposal may be obtained from the Office of Child Care. Room 6116, GSA Building, 1800 F Street NW, Washington, DC 20405, or by telephoning (202) 208–5119.

Dated: June 12, 2000.

David A. Drabkin,

Deputy Associate Administrator for Acquisition Policy.

[FR Doc. 00–15334 Filed 6–16–00; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Establishment and Request for Nominations; National Human Research Protections Advisory Committee

AGENCY: Office of Public Health and Science, DHHS.

ACTION: Notice of establishment and request for nominations for members on National Human Research Protections Advisory Committee.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–493, as amended (5 U.S.C. App. 2), the Office of Public Health and Science (OPHS), announces the establishment of the Advisory Committee on National Human Research Protections by the Secretary, DHHS, June 6, 2000, of the following Federal advisory committee:

The Department of Health and Human Services (DHHS), National Human Research Protections Advisory Committee (NHRPAC or Committee) will provide expert advice and counsel to the Secretary of DHHS, Assistant Secretary for Health (ASH), the Director, Office for Human Research Protection (OHRP), and other departmental officials on a broad range of issues and topics pertaining to or associated with the protection of human research subjects. NHRPAC will serve as the Department's principal advisory body on matters pertaining to human subjects protection.

Members will be selected from among individuals possessing demonstrated experience and expertise in any of the several areas pertinent to human subjects protection. The Director, OHRP, shall serve as Executive Secretary of the Committee.

Duration of this Committee is continuing unless formally determined by the Secretary, DHHS, that termination would be in the public interest.

The Secretary, Department of Health and Human Services (DHHS), has established the Office for Human Research Protections (OHRP) within the Office of Public Health and Science (OPHS), Office of the Secretary (OS), which will be under the direction of the Assistant Secretary for Health (ASH), for the purpose of assuming the responsibilities for human subjects protection activities currently carried out by the former Office of Protection from Research Risks (OPRR), National Institutes for Health (NIH).

The National Human Research Protections Advisory Committee (NHRPAC), consisting of members appointed from nominees with demonstrated expertise in the protection of human subjects in research and federal officials has been chartered in accordance with the Federal Advisory Committee Act (FACA) to provide expert advice and counsel to the Secretary, ASH, the Director, OHRP, and other departmental officials on a broad range of issues and topics pertaining to or associated with the protection of human research subjects.

Nominations are sought of individuals who possess demonstrated expertise in human subjects protections, the conduct of research involving human subjects, the oversight of research involving human subjects, patient representation or advocacy, biomedical ethics, researchers, and others possessing pertinent experience and expertise in the field. Self-nominations or nominations of individuals by organizations or third parties are invited.

Self-nominations must include a complete curriculum vitae which provides descriptions of pertinent experience and expertise and a letter expressing interest in being considered for appointment. The curriculum vitae, cover letter, or both must contain full contact information.

Nominations proffered by organizations or third parties must include a complete curriculum vitae which provides descriptions of the nominee's pertinent experience and a cover letter of nomination that indicates that the nominee has been contacted and agreed to the nomination. Nomination letters from organizations should be on organizational letterhead and signed by an officer or recognized representative of the organization. Full contact information for the nominator and the nominee must be included. Third parties not acting for an organization need not use letterhead.

Each nominee will be provided with a complete copy of the fully executed charter for the NHRPAC as soon as it becomes available.

Candidates will be asked to provide detailed information concerning such matters as financial holdings, consultancies, research grants, contracts, and associated financial relationships to develop sufficient information to permit evaluation of possible sources of conflicts of interest. Committee members will be compensated for the time spent in Committee meetings as well as per diem costs, each at established standard federal rates.

DATES: Nominations will be accepted at the above address until 5 p.m. eastern time on August 18, 2000.

ADDRESSES: All nominations for membership should be submitted to: RADM Arthur J. Lawrence (address below).

FOR FURTHER INFORMATION CONTACT: RADM Arthur J. Lawrence, Assistant Surgeon General and Deputy Assistant Secretary for Health (Operations), Office of Public Health and Science, OS, DHHS, Room 716G, Humphrey Building, 200 Independence Ave. SW, Washington, DC 20201; contact number (202) 690–7439.

Dated: June 12, 2000.

David Satcher,

Assistant Secretary for Health and Surgeon General.

[FR Doc. 00–15333 Filed 6–16–00; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–41–00]

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 Projects

National Hospital Ambulatory Medical Care Survey—0920–0278)—Revision—(NCHS)—The National Hospital Ambulatory Medical Care Survey (NHAMCS) has been conducted annually since 1992 and is directed by the Division of Health Care Statistics, National Center for Health Statistics, Centers for Disease Control and Prevention. The purpose of the NHAMCS is to meet the needs and demands for statistical information about the provision of ambulatory medical care services in the United States. Ambulatory services are rendered in a wide variety of settings, including physicians' offices and hospital outpatient and emergency departments. The target universe of the NHAMCS is in-person visits made in the United States to outpatient departments and emergency departments of non-Federal, short-stay hospitals (hospitals with an average length of stay of less than 30 days) or those whose specialty is general (medical or surgical) or children's general. The NHAMCS was initiated to complement the National Ambulatory Medical Care Survey (NAMCS, OMB No. 0920–0234) which provides similar data concerning patient visits to physicians' offices. The NAMCS and NHAMCS are the principal sources of data on approximately 90 percent of ambulatory care provided in the United States.

The NHAMCS provides a range of baseline data on the characteristics of the users and providers of ambulatory medical care. Data collected include patients' demographic characteristics and reason(s) for visit, and the physicians' diagnosis(es), diagnostic services, medications, and disposition. These data, together with trend data, may be used to monitor the effects of change in the health care system, the planning of health services, improving medical education, determining health care work force needs, and assessing the health status of the population.

Users of NHAMCS data include, but are not limited to, congressional offices, Federal agencies such as NIH, state and local governments, schools of public health, colleges and universities, private industry, nonprofit foundations, professional associations, as well as individual practitioners, researchers, administrators, and health planners. Uses vary from the inclusion of a few selected statistics in a large research effort, to an in-depth analysis of the entire NHAMCS data set covering several years.

The number of respondents for the NHAMCS is based on a sample of 600 hospitals with an 87 percent participation rate. The total annual burden hours is 13.450.

Form name	Number of respondents	Number of responses	Avg. burden per response (hours)	Total Burden (in hours)
Hospital Induction (NHAMCS–101):				
Ineligible	65	1	15/60	16
Eligible	535	1	70/60	624
Ambulatory Unit Induction (ED) (NHAMCS–101/U)	435	1	1	435
Ambulatory Unit Induction (OPD) (NHAMCS–101/U)	300	4	1	1,200
ED Patient Record Form	435	100	5/60	3,625
OPD Patient Record Form	300	300	5/60	7,500
Nonresponse study	50	1	1	50
Total				13,450

Dated: June 14, 2000.

Charles W. Gollmar,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–15458 Filed 6–16–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 00120]

West Nile Virus Surveillance Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2000 funds for a cooperative agreement program for West Nile Virus Surveillance. This program addresses the ''Healthy People 2010'' focus area Immunization and Infectious Diseases. For a conference copy of ''Healthy People 2010'', visit the internet site: <http://www.health.gov/healthypeople>

The purpose of the program is to assist states in developing and implementing dead bird and human/equine encephalitis surveillance activities focusing on West Nile (WN) Virus.

The WN fever outbreak in the northeastern United States (U.S.) in the summer and fall of 1999, represented the first incursion of this exotic arbovirus into the U.S. As of December 9, 1999, 62 confirmed or probable human cases of WN virus infection had been identified, including seven deaths.

The basic transmission cycle of WN fever involves mosquitoes feeding on birds infected with the WN virus. Infected mosquitoes then transmit WN

virus to humans and animals. This virus outbreak occurred during the peak southerly bird migration, and the effect this migration had on the spread of the virus beyond the outbreak epicenter is unknown. Additional information may be found in 3 MMWR articles (attached in the application package).

B. Eligible Applicants

Assistance will be provided only to state health departments in the contiguous 48 states that are not currently receiving or eligible for WN funding through other CDC cooperative agreement programs. Thus, the following five states are eligible to apply for these funds under this announcement:

Arkansas, Idaho, Nevada, New Hampshire, and North Dakota.

No other applications are solicited.

All other state health departments in the contiguous 48 states are receiving or are eligible for WN surveillance funding in FY 2000 through other CDC programs including the Epidemiology and Laboratory Capacity (ELC) for Infectious Diseases, the Emerging Infections Program (EIP), and the Council for State and Territorial Health Departments (CSTE) cooperative agreements.

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 $450,000 is available in FY 2000 to fund five awards. It is expected that each approved applicant will receive an award not exceeding $90,000 (including direct and indirect costs). It is expected that the awards will begin on or about August 1, 2000 and will be made for a 12-month budget period within a project period of one year. Funding estimates may change.

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under Recipient Activities, and CDC will be responsible for conducting activities under CDC Activities:

Recipient Activities

1. Develop or enhance dead bird and human/equine encephalitis surveillance activities, focusing on WN virus. Activities should be consistent with published CDC guidelines entitled Epidemic/Epizootic West Nile Virus in the United States: Guidelines for Surveillance, Prevention and Control, March 2000—available via the CDC Web site at: http://www.cdc.gov/ncidod/dvbid/ arbor/WN_surv_guide_Mar_2000.pdf

2. Conduct data analysis and interpret and disseminate results.

3. If proposed activities involve research on human participants, ensure appropriate Institutional Review Board (IRB) review.

CDC Activities

1. Provide overall multi-site project coordination.

2. Provide technical support in the design, implementation, and evaluation of program activities, if requested.

3. Assist in data analysis and dissemination of project findings as needed.

4. If during the project period research involving human subjects should be conducted and CDC scientists will be co-investigators in that research, assist in the development of a research protocol for IRB review by all 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. Applications will be evaluated on the criteria listed in Section G., below, so it is important that narratives clearly address the criteria.

The narratives should be no more than 5 single-spaced pages along with a separate line-item budget and justification.

As indicated in the Availability of Funds section above, the maximum award to any single applicant will be $90,000 (including direct and indirect costs). Do NOT submit a budget for any more than $90,000 total. A budget justification is required for all budget items and must be submitted with Standard Form 424A, ''Budget Information,'' as part of the CDC application Form 0.1246(E). If requesting funds for any contractual activities, provide the following information for each contract or subaward: (1) Name of proposed contractor, (2) breakdown and justification for estimated costs, (3) description and scope of activities to be performed by contractor, (4) period of performance, (5) method of contractor selection (*e.g.,* sole-source or competitive solicitation), and (6) method of accountability.

All pages of the applications must be single-spaced, printed on one side, with one inch margins and a font size of 12 on white 8.5″ x 11″ paper.

The required original application and two full copies must be submitted unstapled and unbound. Do not submit any bound or stapled materials (*e.g.,* pamphlets, booklets, etc.) in the appendices. The entire application must be able to run through an automatic document feed copier.

F. Submission and Deadline

Application

Submit the original and two copies of CDC 0.1246. Forms are available in the application kit. On or before July 12, 2000, submit the application to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

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 submission to the independent review group. (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.

G. Evaluation Criteria

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC:

1. Objectives (40 points): The extent to which the objectives for the project are clear and consistent with the purpose and Program Requirements of this cooperative agreement announcement.

2. Operational Plan (60 points): The extent to which the operational plan is clear and appropriate to achieve the stated objectives, identifies the key personnel and organizations responsible for the proposed activities, and identifies a specific timetable for activities. If proposed activities involve research on human participants, the degree 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: (a) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation; (b) The proposed justification when representation is limited or absent; (c) A statement as to whether the design of the study is adequate to measure differences when warranted; (d) 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. Budget (not scored): The extent to which the project budget includes detailed line-item justification and is appropriate for the activities proposed.

4. Human Subjects (not scored): If proposed activities involve research on human participants, does the application adequately address the requirements of Title 45 CFR Part 46 for the protection of human subjects?

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of

1. Mid-program period progress report (due 6 months after award date);

2. financial status report, no more than 90 days after the end of the budget/project period; and

3. final performance report, no more than 90 days after the end of the budget/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*s Attachment I in the application kit.

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–10 Smoke–Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under the Public Health Service Act Sections 301(a)[42 U.S.C. 241(a)] and 317(k)(2)[42 U.S.C. 247b(k)(2)], as amended. The Catalog of Federal Domestic Assistance number is 93.283.

J. Where To Obtain Additional Information

To obtain additional information, contact: Andrea Wooddall, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, Room 3000, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone number: (770) 488–2749, Email address: AWooddall@cdc.gov.

For program technical assistance, contact: John T. Roehrig, Ph.D., Arbovirus Diseases Branch, Division of Vector-Borne Infectious Diseases, National Center for Infectious Diseases, Centers for Disease Control and Prevention (CDC), P. O. Box 2087 (Mailstop P02), Fort Collins, CO 80522, Telephone number: (970) 221–6465; Fax: (970) 221–6476, Email: jtr1@cdc.gov.

Attachments (The following articles are included in the mailed application kit):

Attachment II: MMWR, Outbreak of West Nile-Like Viral Encephalitis—New York, 1999. October 1, 1999/48(38);845–9.

Attachment III: MMWR, Update: West Nile-Like Viral Encephalitis—New York, 1999. October 8, 1999/48(39);890–2.

Attachment IV: MMWR, Update: West Nile Virus Encephalitis—New York, 1999. October 22, 1999/48(41);944–946, 955.

Dated: June 13, 2000.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–15372 Filed 6–16–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Runaway and Homeless Youth Program Regulations—Final Rule.

OMB No.: New Collection.

Description: The Runaway and Homeless Youth program is administered by the Family and Youth Services Bureau (FYSB). The authorizing legislation for the Runaway and Homeless Youth (RHY) Program, Pub. L. 106–71 (42 U.S.C. 5701), Section 311, set forth provisions for awarding grants through a competitive process to public and nonprofit private entities (and combinations of such entities) to establish and operate local programs to provide services for runaway and homeless youth and for their families. For the competitive grant making process, eligible entities are required to describe their goals, plans (scope of activities), capacities and other qualifications for receiving Federal funding to operate the type of youth services programs authorized under the RHY Act. The detailed information is collected via the Uniform Project Description (UPD), OMB control number 0970–0139. The UPD information collected is the basis for determining the most appropriate entities for grant funding. Basic organizational and summary budget information required by OMB circular A–102 as part of an ''Application for Federal Assistance'' is also collected via the SF–424 (OMB control number 0348–0043), the SF–424A (OMB control number 0348–0044), the SF–424B (OMB control number 0348–0040) and the ''Disclosure of Lobbying Activities'' SF–LLL (OMB number 0348–0046). The information is requested annually through the RHY Program Announcement. The program regulations implementing provisions of the RHY Act limit grants project periods to three years (a limit not specified in the statue). The final rule would change the project periods from a maximum of three years to five years. The regulation change is technical in nature and will allow FYSB the flexibility and discretion to award some grants for five-year periods, instead of three years. The regulatory change will not increase the burden for any entities. The change will only affect the frequency of application submission.

Respondents: Community-based Organizations, States, and Tribes.

ANNUAL BURDEN ESTIMATES

Instrument	Number of Respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Application	500	1	20	10,000
Estimated Total Annual Burden Hours				10,000

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: June 13, 2000.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 00–15339 Filed 6–16–00; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Uniform Project Description for Discretionary Grant Application Form

OMB No. 0970–0139

Description: ACF has more than forty discretionary grant programs. The proposed information collection form would be a uniform discretionary application form usable for all of these grant programs to collect the information from grant applicants needed to evaluate and rank applicants and protect the integrity of the grantee selection process. All ACF discretionary grant programs would be eligible but not required to use this application form. The application consists of general information and instructions; the Standard Form 424 series that requests basic information, budget information and assurances; the Program Narrative requesting the applicant to describe how these objectives will be reached; and certifications. Guidance for the content of information requested in the Program Narrative is found in OMB Circulars A–102 and A–110.

Respondents: Applicants for ACF Discretionary Grant Programs.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
UPD	4,133	1	4	16,532
Estimated total annual burden hours				16,532

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: June 13, 2000.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 00–15340 Filed 6–16–00; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Children's Hospitals Graduate Medical Education Payment Program: Proposed Eligibility and Funding Criteria and List of Eligible Hospitals

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration (HRSA) announces the Children's Hospitals Graduate Medical Education (CHGME) Payment Program, authorized under section 340E of the Public Health Service (PHS) Act (the Act) (42 U.S.C. 256e), as added by the Healthcare Research and Quality Act of 1999 (Public Law 106–129), enacted December 6, 1999. This notice requests comments on proposed eligibility criteria, funding factors and methodology, and performance measures for participating hospitals for the CHGME program. It includes a list of hospitals meeting these proposed eligibility criteria. In compliance with the Paperwork Reduction Act of 1995, the Department will obtain prior Office of Management and Budget clearance to any data collections imposed on the public.

DATES: Interested persons are invited to comment by July 19, 2000. All comments received on or before July 19, 2000 will be considered in the development of the criteria and methodology for the CHGME program. Comments will be addressed individually or by group in the final notice published in the **Federal Register**.

ADDRESSES: All written comments concerning this notice should be submitted to F. Lawrence Clare, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, Room 9A–21, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857; or by e-mail to: ChildrensHospitalGME@hrsa.gov.

FOR FURTHER INFORMATION CONTACT: F. Lawrence Clare, Division of Medicine; telephone (301) 443–7334.

SUPPLEMENTARY INFORMATION:

Purpose

The Children's Hospitals Graduate Medical Education Payment Program provides funds to children's hospitals to support the training of pediatric and other residents in graduate medical education programs (GME). Since Federal financial support of graduate medical education is extensively supported by the Medicare system, this program compensates for the disparity in the level of Federal funding for teaching hospitals for pediatrics versus other types of teaching hospitals. For example, on average a freestanding children's hospital receives $374 per resident in Medicare funds versus an average of $87,034 per resident for a non-children's hospital.

The CHGME program is an interim measure to assist children's hospitals to continue their teaching programs while Congress examines the medical education funding system. The Secretary of HHS (the Secretary) has delegated the authority for the administration of the CHGME program to HRSA which redelegated it to the Bureau of Health Professions (BHPr).

Available Funds

The Act authorizes $280 million for fiscal year (FY) 2000 and $285 million for FY 2001. Under the FY 2000 appropriations law, $40 million has been appropriated for this program. The Act directs the Secretary to make payments for both direct and indirect expenses to each eligible children's hospital.

I. Dividing the CHGME Appropriation Between Direct and Indirect Medical Education

The Act requires the Secretary to make payments to children's hospitals for both direct and indirect medical education expenses (DME and IME). Although the Act authorizes funds for FY 2000 and FY 2001 in specific amounts for each, the Appropriation Act does not similarly divide the appropriation between DME and IME.

In FY 2000, section 340E(f) authorizes the appropriation of $90 million for DME and $190 million for IME. To conform with the allocation of funds indicated in the Act, the Secretary will divide the amount appropriated between DME and IME based on the ratio set forth in the authorizing statute, approximately one-third of the funds to DME and two-thirds to IME.

II. Proposed Hospital Eligibility Criteria

The Act requires HHS to make payments to ''children's hospitals that operate graduate medical education programs.'' A children's hospital is defined as a hospital in which more than 50 percent of its patients are under the age of 18, referencing the definition of children's hospital contained in section 1886(d)(1)(B)(iii) of the Social Security Act (42 U.S.C. 1395ww). Regulations at 42 CFR 412.23(d) use this definition in the Prospective Payment Systems (PPS) for Inpatient Hospital Services. The Department proposes to define a children's hospital eligible for funding by adopting this definition of children's hospital from the PPS regulations as follows:

A children's hospital must-

(1) Have a provider agreement with a unique Medicare provider number as a hospital, under Section 1886(d)(1)(B)(iii) of the Social Security Act;

(2) Be engaged in furnishing services to inpatients who are predominantly individuals under the age of 18; and

(3) Participate in an accredited graduate medical education program.

The Congressional intent of the CHGME program is to provide funds only to children's hospitals that do not have access to Medicare payments under the PPS system to achieve some degree of parity in support. Fifty-nine was the number of teaching hospitals certified by Medicare as children's hospitals at that time.

Accordingly, the proposed eligibility criteria exclude children's hospitals which are part of a hospital system, rather than freestanding. Even if a children's hospital is separately identified in the AMA Directory but shares a Medicare provider number as part of a health system, it still would not be considered to be an eligible children's hospital under these criteria. Since these hospitals have access to Medicare direct and indirect GME funding as part of the PPS, they are able to receive the higher levels of Medicare GME paid to PPS hospitals, by being able to (1) factor a higher Medicare patient proportion into the direct GME funding formula, and (2) receive, as part of a PPS hospital system, indirect GME funds. Thus, these hospitals are not within the universe of intended beneficiaries of the CHGME program.

The physical characteristics or location of a children's hospital are irrelevant to eligibility. Even if a children's hospital is separated physically from its adult hospital partner, sharing a Medicare provider number makes the children's hospital ineligible because it then qualifies for Medicare GME funds for its pediatric or other residents under the PPS as part of the adult hospital partner.

Payments made to a children's hospital will have no effect on payments received under the Medicare or Medicaid programs. The intent of the CHGME program is to create a degree of parity between children's hospitals and adult hospitals. Accordingly, the CHGME program will operate independently from the Medicare and Medicaid programs.

Based on the proposed eligibility criteria, the Department has identified the following-listed hospitals potentially eligible for this program as of December 6, 1999. Any hospitals meeting the proposed criteria which are not included on the list may inform the Department of their eligibility during the comment period for this notice. The Secretary will then publish a revised list

of eligible hospitals for FY 2000 in the final **Federal Register** notice.

Medicare Provider Number	Facility name	City	State
01–3300	Children's Hospital of Alabama	Birmingham	AL
04–3300	Arkansas Children's Hospital	Little Rock	AR
05–3300	Valley Children's Hospital	Madera	CA
05–3301	Children's Hospital Medical Center	Oakland	CA
05–3302	Children's Hospital of Los Angeles	Los Angeles	CA
05–3303	Children's Hospital and Health Center	San Diego	CA
05–3304	Children's Hospital of Orange County	Orange	CA
05–3305	Lucile Salter Packard Children's Hospital	Palo Alto	CA
06–3301	The Children's Hospital	Denver	CO
07–3300	Connecticut Children's Medical Center	Hartford	CT
08–3300	Alfred I Dupont Institute	Wilmington	DE
09–3300	Children's Hospital National Medical Center	Washington	DC
10–3300	All Children's Hospital	Saint Petersburg	FL
10–3301	Miami Children's Hospital	Miami	FL
11–3300	Egleston Children's Hospital at Emory	Atlanta	GA
12–3300	Kapiolani Women's & Children's Medical Center	Honolulu	HI
14–3300	Children's Memorial Hospital	Chicago	IL
14–3301	Larabida Children's Hospital	Chicago	IL
15–3300	St. Vincent's Children's Specialty Hospital	Indianapolis	IN
19–3300	Children's Hospital	New Orleans	LA
21–3301	Kennedy Krieger Institute	Baltimore	MD
22–3300	Franciscan Children's Hospital & Rehabilitation Center	Brighton	MA
22–3302	The Children's Hospital	Boston	MA
23–3300	Children's Hospital of Michigan	Detroit	MI
24–3300	Gillette Children's Hospital	Saint Paul	MN
24–3301	Children's Health Care—Saint Paul	Saint Paul	MN
24–3302	Children's Health Care—Minneapolis	Minneapolis	MN
26–3301	St. Louis Children's Hospital	Saint Louis	MO
26–3302	Children's Mercy Hospital	Kansas City	MO
28–3300	Boys Town National Research Hospital	Omaha	NE
28–3301	Children's Memorial Hospital	Omaha	NE
31–3300	Children's Specialized Hospital	Mountainside	NJ
32–3307	Carrie Tingley Hospital	Albuquerque	NM
33–3301	Blythdale Children's Hospital	Valhalla	NY
36–3300	Children's Hospital Medical Center	Cincinnati	OH
36–3302	Rainbow Babies and Children's Hospital	Cleveland	OH
36–3303	Children's Hospital Medical Center	Akron	OH
36–3304	Cleveland Clinic Children's Rehabilitation Hospital	Cleveland	OH
36–3305	Children's Hospital	Columbus	OH
36–3306	Children's Medical Center	Dayton	OH
36–3307	Northside and Tod Children's Hospital	Youngstown	OH
37–3301	Children's Medical Center	Tulsa	OK
39–3307	St. Christopher's Hospital for Children	Philadelphia	PA
39–3302	Children's Hospital of Pittsburgh	Pittsburgh	PA
39–3303	Children's Hospital of Philadelphia	Philadelphia	PA
40–3301	University Pediatric Hospital	San Juan	PR
44–3302	St. Jude Children's Research Hospital	Memphis	TN
44–3303	East Tennessee Children's Hospital	Knoxville	TN
45–3300	Cook Ft. Worth Children's Medical Center	Fort Worth	TX
45–3301	Driscoll Children's Hospital	Corpus Christi	TX
45–3302	Children's Medical Center of Dallas	Dallas	TX
45–3304	Texas Children's Hospital	Houston	TX
45–3305	Santa Rosa Children's Hospital	San Antonio	TX
46–3301	Primary Children's Medical Center	Salt Lake City	UT
49–3301	Children's Hospital—King's Daughters	Norfolk	VA
50–3300	Children's Hospital & Regional Medical Center	Seattle	WA
50–3301	Mary Bridge Children's Health Center	Tacoma	WA
52–3300	Children's Hospital of Wisconsin	Milwaukee	WI

Changes in Eligibility Status

For each fiscal year, the Secretary will publish a **Federal Register** notice inviting applicants for the CHGME program and listing the eligible children's hospitals. Since HHS calculates the payments for each fiscal year by dividing the available funds by the resident count data submitted by the eligible hospitals, additional hospitals cannot be included for funding for that fiscal year after the allocation has been made. Newly-qualifying institutions must notify HHS as soon as possible to be added to the list of eligible hospitals for the next fiscal year.

A children's hospital which loses its eligibility during the course of a fiscal year must notify HHS immediately of the change in status. The Department will then declare the hospital to be

ineligible and terminate its payments under the CHGME program. The hospital will remain liable for the reimbursement, with interest, of any money received during a period of ineligibility.

Funds that are returned to the Department during a fiscal year by the termination of hospitals from the CHGME program will be distributed as follows: (1) Direct GME funds will be 8 placed in the direct GME withholding account and distributed to the remaining children's hospitals as part of the reconciliation process; and (2) the IME funds will be distributed to the remaining children's hospitals during the fiscal year based on the IME formula. The latter approach is necessary because IME funding has no reconciliation process.

III. Determining Resident Counts in the CHGME Program

Definition. Section 340E(c)(1) of the Act provides that the amount of the payment to a children's hospital for direct medical expenses is equal to the product of the amount per resident as determined under paragraph (2) of that section and—

> the average number of full-time equivalent (FTE) residents in the hospital's approved graduate medical residency training programs, as determined under section 1886(h)(4) [42 U.S.C. 1395ww(h)(4)] of the Social Security Act during the fiscal year.

Section 340E(g)(1) of the Act defines the term ''approved graduate medical residency training program'' by reference to section 1886(h)(5)(A) of the Social Security Act (42 U.S.C. 1395ww(h)(5)(A)). Regulations at 42 CFR 413.86 implement these provisions.

Accordingly, the term ''approved graduate medical residency training program'' means a residency or other postgraduate medical training program in allopathic medicine, osteopathic medicine, dentistry, and podiatry approved by the indicated accrediting body in which participation may be counted toward certification in a specialty or subspecialty. Only residents in allopathic medicine, osteopathic medicine, dentistry, and podiatry will be counted to determine the amount of direct and indirect medical expenses paid to children's hospitals.

Residency FTE Reporting Period

The Act requires the Secretary to make CHGME payments ''for each of fiscal years 2000 and 2001,'' (emphasis added). ''Fiscal Year'' means the Federal Fiscal Year from October 1 of each year through September 30 of the following year, not to be confused with the hospital cost-reporting periods used for Medicare GME purposes. The CHGME statute distinguishes ''fiscal year'' from a hospital's ''cost reporting period.'' ''Cost reporting period'' is used in two provisions to differentiate specific time periods from the Federal fiscal year. Accordingly, the Secretary is interpreting ''fiscal year'' to mean ''Federal fiscal year.'' To receive CHGME funds, a hospital must submit the number of FTE residents at the hospital during the Federal fiscal year for which payments are being made.

Counting FTE Residents

Section 340E(c)(1)(B) requires that the average number of FTE residents in the hospital's approved residency programs be determined according to section 1886(h)(4)(42 U.S.C. 1395ww(h)(4)) of the Social Security Act. This section is implemented by regulations at 42 CFR 413.86(f), (g), (h), and (i). These provisions indicate: How to determine the total and weighted numbers of FTE residents; the required documentation and certification for purposes of application for Medicare payments by hospitals for cost reporting periods; and the application of the ''caps'' (described in sec. 1886(h)(4)(f) of the Social Security Act (42 U.S.C. 1395ww(h)(4)(f))) and ''rolling averages'' (described in sec. 1886(h)(4)(g) of the Social Security Act (42 U.S.C. 1395ww(h)(4)(g))) to FTE resident counts prior to weighting. Hospitals must certify the accuracy of their FTE resident counts and apply the Medicare cap and rolling average to this count.

Because these requirements are closely tied to Medicare, the Department will be using Medicare data to assist in verifying the submitted counts. Comment is solicited on whether the program should require the standardized reporting of resident counts currently required in the Medicare Intern and Resident Information System (IRIS).

The cap requires an accurate count for the last hospital cost reporting year ending on or before December 31, 1996. The Department will rely on the resident counts reported on Medicare cost reports to verify each hospital's count. Some hospitals may have previously undercounted their residents in their Medicare cost reports due to the insignificance of their Medicare payments. Because of the cap, hospitals that underreported that number should consider requesting the Department to reopen their Medicare cost reports, pursuant to 42 CFR 405.1885, to revise the numbers submitted for cost reports that are subject to reopening.

The regulations at 42 CFR 413.86 do not apply to a hospital which had not previously submitted Medicare cost reports but had been operating a residency training program. Hospitals must determine their resident counts in the cost-reporting year ending in 1996. In cases where this is very difficult to establish from existing records, it is necessary to propose an FTE counting methodology addressing this situation.

For most hospitals, program size and resident rotations among the participating institutions are relatively stable from year to year. Therefore, a hospital could address missing FTE counts for earlier years by starting with the assumption that these counts would be the same as the FY 1999 count in the absence of changes in the residency programs after 1996. The incremental effect of any changes could be estimated by adjusting the FY 1999 and FY 2000 counts to determine resident FTE counts for FY 1996 through FY 1998. Examples of adjustments for incremental changes in FTE counts follow:

Example A: The children's hospital has 24 residents in a pediatric residency program. The residents spend 90 percent of their time at the children's hospital and 10 percent rotating to other hospitals. The hospital's *unweighted* FTE count for its cost reporting period beginning in FY1999 is 21.6 (the unweighted FTE count is the FTE number of residents *prior* to weighting the residents who have exceeded the number of years of formal training necessary to satisfy the requirements of the appropriate approving body related to board certification or 5 years, whichever is less, by 0.5). The unweighted FTE count for its cost reporting period ending in calendar year 1996 is deemed to be 21.6. This becomes the cap, which applies to Federal fiscal years 2000 and beyond.

Example B: The children's hospital had 24 residents in its pediatric residency program (8 in each of 3 residency years) until the program year beginning July 1, 1999, when the number of first year residents was increased to 10. The residents spend all their time at the children's hospital. The hospital's unweighted FTE count for its cost-reporting period ending 12/31/99 is 25, because the additional first year residents added 1.0 to the FTE resident count (two residents for 6 months each). The count for its cost reporting period ending in calendar year 1996, and the hospital's cap from that point on, is deemed to be 24.

Example C: The children's hospital is a major participating institution for five residency programs. During its cost-reporting period ending 6/30/99, 100 residents rotated from other hospitals for rotations of 1 to 6 months. The hospital's unweighted FTE count was 25. The same affiliation agreements have been in effect since before 1996 and there were no significant changes in the size of the residency programs or rotation schedules. The hospital's unweighted count for its cost reporting period ending in calendar year 1996 (which ended 6/30/96), and therefore its cap for future years, is deemed to be 25.

Example D: The children's hospital is a major participating institution for five residency programs. During its cost-reporting period ending 6/30/99, 100 residents rotated from other hospitals for rotations of 1 to 6 months. The hospital's unweighted FTE count was 25. During the program year beginning in 1997, the hospital started serving as a training site for the first time for a family practice program which sends three residents for 3 months each for a continuity clinic in each of the first two family practice program years. The residents count as 1.5 FTE in the hospital's FTE count for its FY ending 6/30/99 (0.75 FTE for 1st year residents and 0.75 for 2nd year residents). The hospital's count for its cost reporting period ending in calendar year 1996 (FY ending 6/30/96), and therefore its cap, is deemed to be 23.5.

If no prior counts were reported, it would then only be necessary to determine the 1996-based cap from the FY1999 and FY2000 actual counts if the number of residents had increased after 1996. The cap would not be operative if there had been no change or a decrease since 1996.

Similarly, Medicare applies a ''rolling average'' to resident counts (42 CFR 413.86(g)(5)). Unlike the cap, the rolling average is applied to weighted FTE resident counts. For the hospital's first cost reporting period beginning on or after October 1, 1997, the weighted FTE count equals the average of the weighted count for that period and the preceding cost reporting period. For cost reporting periods beginning on or after October 1, 1998, the hospital's weighted FTE count equals the average of that reporting year and the two preceding cost reporting years.

For the weighted FTE resident count for Federal fiscal years 2000 and 2001, the hospital must determine the weighted FTE resident count for each Federal fiscal year beginning October 1, 1997 (which is also the effective date of the caps). The FTE resident counts for these years are needed to determine the cap and the rolling average for Federal fiscal years 1999 and 2000.

IV. Determining Direct Medical Education Payments

Section 340E(a) requires the Secretary to make payments for direct and indirect expenses associated with operating approved graduate medical residency training programs for each of fiscal years 2000 and 2001. Section 340E(b) describes direct expenses as covering the costs of 13 operating approved graduate medical residency training programs. Subsection (e)(1) requires the Secretary to determine the amount of direct and indirect payments for each hospital before the beginning of each fiscal year for which payments are made and to make these payments to each hospital in 26 equal installments during the fiscal year. If the Secretary determines that the funds appropriated for the CHGME program for a fiscal year are insufficient to provide the total payments due to hospitals for that fiscal year, the Secretary will reduce the amount of payments to each hospital on a pro-rata basis.

The Act also provides a method for refining the accuracy of the direct payments made to each hospital. Under subsection (e)(2), the Secretary must withhold up to 25 percent from each direct medical education interim installment payable to hospitals to permit the final adjustment and reconciliation of the number of FTE residents for whom direct payments are being made. At the end of that fiscal year, each participating hospital must submit information to enable the Secretary to determine the percentage (if any) of the total amount withheld that is due each hospital for the fiscal year. The hospital may request a hearing on the Secretary's payment determination. The Secretary pays each hospital any balance due or recoups any overpayments made.

Due to the time limitations in establishing a new program and the one year availability of the $40 million appropriated in FY 2000, for the CHGME program, the Secretary will obligate the entire CHGME appropriation in FY 2000, without the withholding of direct payments.

Determination of the Amount of Direct Medical Education Payment

Section 340E(c)(1) requires that the payments to a children's hospital for direct medical education expenses for a fiscal year equal the product of:

- The updated per resident amount as determined under subsection (c)(2); and
- The average number of FTE residents in the hospital's graduate approved medical residency program as determined under section 1886(h)(4) of the Social Security Act during the fiscal year.

Section 340E(c)(2) determines the updated per resident amount for direct medical education using the following methodology. The Secretary will:

(1) *Determine the hospital's single per resident amount:* Compute for each of every (not just children's) teaching hospital a single per resident amount computed equal to the weighted average of the primary care per resident amount and the non-primary care per resident amount computed under 1886(h)(2) of the Social Security Act for cost reporting periods ending during FY 1997;

(2) *Determine the wage and non-wage-related proportion of the single per resident amount:* Estimate the average proportion of the single per resident amount that is attributable to wages and wage-related costs;

(3) *Standardize per resident amounts:* Establish a standardized per resident amount for each children's hospital that is adjusted for wages;

(4) *Determine a national average per resident amount:* Compute a national average per resident amount equal to the average of the standardized amounts computed above weighted by the average number of FTE residents at the children's hospitals; and

(5) *Apply factors 1–4 to each hospital:* Compute for each children's hospital the national average per resident amount after adjustment for wage-related costs.

Updating the Per Resident Amount

The legislation provides for updating the per resident amount for each hospital by the estimated percentage increase in the consumer price index for all urban consumers during the period beginning October 1997 and ending with the midpoint of the hospital's cost reporting period that begins in FY 2000. Since the CHGME will operate on a fiscal rather than a cost reporting year basis, it is inappropriate to end the adjustment period with the midpoint of the cost reporting year. To do so would create inconsistent and inequitable results, rendering the provision ineffective. To give effect to the intent of updating the per resident amount, the Secretary will update the per resident amounts to a common date, the midpoint of the current fiscal year.

Determining the Single Per Resident Amounts

The Secretary proposes to use the Health Care Financing Administration's (HCFA's) Hospital Cost Report Information System (HCRIS), an electronic reporting system, to determine the hospitals single per resident amounts. HCRIS is organized by the cost reporting period beginning dates. The data base for determining the per resident amounts paid to children's hospitals is from all teaching hospitals, not just children's teaching hospitals. HCRIS files are updated quarterly as the cost reports move through the cost report settlement process. The September 30, 1999, HCRIS update file has 1206 hospitals reporting residents for cost reporting periods ending in FY 1997.

Wage Adjustment in Standardizing Per Resident Amounts

Section 340E states that the Secretary—

shall establish a standardized per resident amount for each such hospital by—

(i) Dividing the single per resident amount computed under subparagraph (A) into a wage-related and non-wage related portion by applying the proportion determined under subparagraph (B);

(ii) Dividing the wage-related portion by the factor applied under section 1886(d)(3)(E) of the Social Security Act for discharges occurring during fiscal year 1999 for the hospital's area; and

(iii) Adding the non-wage-related portion to the amount computed under clause (ii).

Subparagraph (B) requires the Secretary to:

[E]stimate the average proportion of the single per resident amounts computed under subparagraph (A) that is attributable to wages and wage-related costs.

Under the Medicare program, direct GME expenses include intern and resident salaries and fringe benefits; compensation to teaching physicians for the teaching and supervision of residents; and other, allocated hospital costs. Earlier HCRIS public use files indicate that the labor-related share of the PPS rate for inpatient operating costs is at 71.1 percent. However, this figure may not be appropriate for the per resident amount since it includes direct patient care costs, such as drugs and room and board costs.

The Department is analyzing the Medicare cost reports to develop a more accurate estimate of the labor-related share of the per resident amount. HHS intent is to complete this analysis in time for the final **Federal Register** notice. Until the analysis is completed, the Secretary proposes that the PPS labor-related share be used to standardize wages in determining the national standard per resident amount.

Determining Payments

Each hospital will be requested to submit an annual application containing the number of weighted FTE residents in all its graduate training programs. Using this data, the Secretary will calculate the hospital's direct GME payment using the following formula:

$$Y_i = \left(X * .711 * WI_i + X * .289\right) * FTE_i$$

Where—

X = national average per resident amount

X_z = national pro-rata average per resident amount (based on funds available)

WI = wage index (for the area in which the hospital is located)

FTE = weighted number of FTE residents working at the hospital

Y = direct GME payment to a hospital

i = indicates an individual hospital

n = the number of children's hospitals participating in the program

Σ = sum of (the following)

Z = the total funds available for direct payments

The total direct GME payments to all children's teaching hospitals equal the sum of payments to all individual hospitals:

$$Y_{total} = \sum_{i=1}^{n} X\left(.711 * WI_i + .289\right) * FTE_i$$

To calculate the *pro rata* average per resident amount based on the funds available (X_z) without knowing the national average per resident amount (X), the Secretary will use the following equation:

$$X_Z = Z / \sum_{i=1}^{n}\left(.711 * WI_i + .289\right) * FTE_i$$

The final **Federal Register** notice will contain a computed national per resident amount.

V. Determining Indirect Medical Education Payments

Sections 340E(a) and (b)(1)(B) require the Secretary to make payments for indirect expenses associated with operating approved graduate medical residency training programs for each of fiscal years 2000 and 2001. Section 340E(b)(1) requires that the payments be made for an approved program ''for a fiscal year,'' and section 340E(b)(1)(B) describes indirect payments as covering ''expenses associated with the treatment of more severely ill patients and the additional costs relating to teaching residents in such programs.''

Subsection (e)(1) requires the Secretary to determine the amount of both direct and indirect payments for each hospital before the beginning of each fiscal year for which payments are made and to make these payments to each hospital in 26 equal installments during the fiscal year. Subsection (d)(2)(B) provides that the indirect payments are equal to the amount appropriated for such expenses for the fiscal year under subsection (f)(2), but unlike the DME payment, there is no provision for withholding a portion of IME payments or making a final reconciliation after the close of the fiscal year.

Section 340E(d)(2) requires the Secretary to determine the appropriate amount of indirect medical education payments for expenses associated with the treatment of more severely ill patients and the additional costs relating to teaching residents in such programs to a children's hospital by considering:

- Variations in case mix among children's hospitals; and
- The hospitals' number of FTE residents in approved training programs.

Determination of Case Mix

The statute provides no guidance on the case mix measure to be used for determining indirect payments. Hence, the Secretary is seeking comments on this issue.

Case mix information for hospitals is typically generated as a by-product of a billing or administrative reporting system. Children's hospitals currently use various DRG systems and weights. These include the HCFA Diagnosis-Related Group (DRG); the All-Payer DRG (AP-DRG); and the All-Payer Refined DRG (APR-DRG) systems. To require a hospital to report its case mix index using a different classification system from its current system would create an administrative burden.

Accordingly, the Secretary proposes to:

(1) Identify the case-mix indexes that are commonly used by children's hospitals; and

(2) Explore the feasibility of adjustment factors derived from comparative studies that allow for approximate equilibration of the various case mix indexes that may be used.

Determining the Number of FTE Residents

Section (d)(2)(A) states that in determining the amount of payments to a children's hospital for indirect medical education expenses, the Secretary shall take into account '' * * * the number of full-time equivalent residents'' in the hospital's approved residency programs. Unlike direct payments, it does not specify that the FTE residents be counted as determined under section 1886(h)(4) of the Social Security Act. FTE residents under Medicare are also counted differently for direct (sec. 1886(h)(4)) of the Social Security Act) and indirect (42 CFR 412.105(a)(1)) payments. Under the latter, ''full-time equivalent residents'' are counted without the weighting applied to the count for direct payment determination.

The Secretary will use the number of FTE residents during the fiscal year as determined under 42 CFR 412.105(a)(1) to determine indirect payments to a hospital.

Factoring in Teaching Intensity

The statute does not specify a factor for determining teaching intensity. Traditionally, the indirect expenses associated with teaching activity are based on costs per case. Teaching hospitals tend to have higher costs per case relative to other hospitals in the same area with a comparable case mix. The higher costs are generally associated with treating a more critically ill patient population than non-teaching hospitals and with the use of more resources, such as diagnostic tests, when residents are involved in the care of patients. A close relationship exists between higher costs and teaching intensity as measured by the ratio of either interns/residents-to-beds, or the ratio of residents to the average daily census of the hospital.

The Secretary proposes to determine teaching intensity using one of the following factors derived from the Medicare formula:

- The ratio of residents to average daily census; or
- The ratio of residents to beds.

In summary, the Secretary proposes to calculate IME payments for a hospital using the number of FTE residents; a case mix index; a case mix adjustment factor to correlate hospitals' case mix information to the case mix index selected for the CHGME program; a teaching intensity adjustment; and volume. Due to the time required to statistically model and analyze the various alternatives, the case mix index, case mix adjustment factor, and the teaching intensity adjustment are not currently available. The Secretary will include a detailed methodology for distribution of the IME funds in the final **Federal Register** notice to be published in July. Although FY 2000 IME funds must be distributed this fiscal year based on the IME formula published in the July notice, we will solicit comments and change the distribution formula for subsequent cycles if appropriate.

VI. Evaluation Criteria

The CHGME program is subject to the Government Performance and Results Act of 1993 (GPRA), Public Law 103–62. GPRA provides Congress with information on whether and in what respects a program is working well or poorly to support its oversight of Federal agencies and their budgets. Therefore, GPRA requires each Federal agency to prepare an annual performance plan covering each program activity set forth in the budget of the agency. The Department must evaluate all programs for effectiveness, efficiency, and continuous improvement. To measure effectiveness, it must obtain performance information from recipients of HHS funds.

Performance Goals

The performance goals described below are those included in the President's FY 2001 GPRA performance plan. These goals are still formative because HHS is unable to set targets until it obtains the necessary data. The Department requests public comment on the appropriateness and feasibility of these performance measures. The Department is particularly interested in receiving comments on the feasibility of each goal, in terms of the hospitals' ability to both provide data and measure the success of the program.

Goals I and II listed below take into consideration that some information requirements may be more easily obtained for residents in programs sponsored by the children's hospital than for residents who rotate in from programs sponsored by another teaching hospital. Comments are requested on the practicality and value of reporting this information on residents who rotate in from programs sponsored by other hospitals, as well as those from residency programs sponsored by the children's hospital.

Proposed Goal I: Eliminate Barriers to Care

A. Maintain the number of FTE residents supported by the children's hospitals receiving funds under the program. The health care workforce environment requires that sufficient numbers and types of physicians be appropriately and adequately trained to care for pediatric populations. Financial pressures common to the academic health center community may raise interest in reducing or eliminating training programs. These hospitals and their training programs provide a significant service to the local, regional, and sometimes national community. A reduction in training programs could impair the provision of those services as well as the production of one-quarter of the Nation's pediatricians and a majority of pediatric specialists. The following data elements provide an accurate accounting of and trends in the number of resident FTEs training in children's hospitals, and are fundamental in determining payments under the program.

Proposed Required Data: While the number of trainees in a given hospital's training program is currently collected by the Health Care Financing Administration (HCFA) for freestanding children's hospitals that request reimbursement from Medicare, not all freestanding children's hospitals that are eligible for participation in the CHGME Program have submitted this information to HCFA. Generally, each hospital has a fairly good accounting of the number of trainees in residency programs sponsored directly by the hospital; but, accounting for the number of trainees rotating to a freestanding children's hospital for a portion of their training is more complicated. Not all children's hospitals have quantified the FTE residents rotating to their hospital from other training programs.

To receive CHGME payments, hospitals must accurately report trainees' numbers. HHS proposes to require each hospital to submit on an annual application the aggregate number of FTE residents, by program, who are:

- In the recipient children's hospital and sponsored by the hospital;
- Rotating into the recipient hospital from residency programs sponsored by other institutions; and
- Sponsored by the hospital and rotating to other hospitals.

These data should already be available now from children's hospitals that furnish Medicare cost report resident data and submit reports under the IRIS. As noted above, comment is being solicited on whether the program should require the standardized reporting of resident counts that is currently required by Medicare in cost reports and IRIS.

B. Increase the percentage of residents' training that is supported in rural and underserved areas. Research on access to health care services has focused on the contribution of physicians treating the underserved. Residency training programs located in rural areas and medically underserved communities (MUCs) (as defined in sec. 799B(6) of the PHS Act; 42 U.S.C. 295p(6)) provide much needed care in their communities while residents learn the knowledge, skills and attitudes necessary to adequately and appropriately care for these rural and underserved populations.

Proposed Required Data: The Department proposes to require each hospital to submit on an annual application the FTE count for resident time spent in training in MUCs and rural areas. The definition for the designation of rural areas will be taken from the United States Department of Agriculture's Urban-Rural County Continuum Code classification system.

Proposed Goal II: Improve Public Health and Health Care Systems.

A. Monitor financial status of hospitals' total and operating margins.

B. Monitor the proportion of uncompensated care patients.

C. Monitor the proportion of Medicaid patients. Children's hospitals have a very high portion of Medicaid patients, at 40 percent of gross patient revenues. Another 4 percent represent charity and bad debt. Children's hospitals also have on average poorer financial status than other teaching hospitals. In 1995, 58 percent of children's hospitals had negative operating margins. This may have been aggravated by major changes in the health care system, including the expansion of managed care and increased enrollments in Medicaid managed care, and increased efforts to constrain health care costs. These changes in the health care system put health facilities that train physicians at a competitive disadvantage. A negative operating margin could affect the long-term viability of children's hospitals and their ability to continue providing a high proportion of care to children covered by Medicaid and uncompensated care. It may also affect their ability to continue training a high proportion of the nation's general and subspecialty pediatric and other residents, since, in the competitive marketplace, payers of health care services have few if any incentives to pay higher costs to sites that train health professionals.

Proposed Required Data: The Department proposes to require each hospital to submit on an annual application the following:

- Total and operating margins;
- Percentage of patients served who are enrolled in Medicaid; and
- Percentage of uninsured patients and uncompensated care.

Economic and Regulatory Impact

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when rulemaking is necessary, to select regulatory approaches that provide the greatest net benefits (including potential economic, environmental, public health, safety distributive and equity effects). In addition, under the Regulatory Flexibility Act (RFA) of 1980, if a rule has a significant economic effect on a substantial number of small entities, the Secretary must specifically consider the economic effect of the rule on small entities and analyze regulatory options that could lessen the impact of the rule.

Executive Order 12866 requires that all regulations reflect consideration of alternatives, of costs, of benefits, of incentives, of equity, and of available information. Regulations must meet certain standards, such as avoiding an unnecessary burden. Regulations which are ''significant'' because of cost, adverse effects of the economy, inconsistency with other agency actions, effects on the budget, or novel legal or policy issues, require special analysis.

The Department has determined that resources to implement this rule are required only of the children's hospitals in submitting their applications and of the Department in reviewing them. Therefore, in accordance with the RFA of 1980, and the Small Business Regulatory Enforcement Fairness Act of 1996, which amended the RFA, the Secretary certifies that this rule will not have a significant impact on a substantial number of small entities. The Secretary has also determined that this rule does not meet the criteria for a major rule as defined by Executive Order 12866 and would have no major effect on the economy or Federal expenditures.

We have determined that the rule is not a ''major rule'' within the meaning of the statute providing for Congressional Review of Agency Rulemaking, 5 U.S.C. 801. Similarly, it will not have effects on State, local, and tribal governments and on the private sector such as to require consultation under the Unfunded Mandates Reform Act of 1995.

Further, Executive Order 13132 establishes certain requirements that an agency must

meet when it promulgates a rule that imposes substantial direct compliance costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have reviewed this proposed action under the threshold criteria of Executive Order 13132, Federalism, and, therefore, have determined that this action would not have substantial direct effects on the rights, roles, and responsibilities of States.

Paperwork Reduction Act of 1995

In accordance with section 3507(a) of the Paperwork Reduction Act (PRA) of 1995, the Department is required to solicit public comments, and receive final Office of Management and Budget (OMB) approval, on collections of information. As indicated, in order to implement the Children's Hospital Graduate Medical Education Payment Program (CHGME), certain information is required as set forth in this notice in order to determine eligibility for payment.

In accordance with the PRA, we are submitting to OMB at this time the following requirements for seeking emergency review of these provisions. HRSA has requested an emergency review because the data collection and reporting of this information is needed before the expiration of the normal time limits under OMB's regulations at 5 CFR part 1320, to ensure the timely availability of data as necessary to ensure payment to eligible children's hospitals. A 30-day notice was published in the **Federal Register** on May 15, 2000 to provide for public comment and to request an expedited review of the information collection associated with the CHGME. Delaying the data collection would delay implementation of the statutory purpose of providing payments by the end of the fiscal year to children's hospitals that support training of residents in graduate medical education programs.

Collection of Information: The Children's hospital Graduate Medical Education Program.

Description: Data is collected on the number of full-time equivalent residents in applicant children's hospital training programs to determine the amount of direct and indirect expense payments to participating children's hospitals. Indirect expense payments will also be derived from a formula that requires the reporting of case mix index information from participating 25c children's hospitals. Hospitals will be requested to submit such information in an annual application.

Description of Respondents: Children's Hospitals operating approved graduate medical residency training programs.

Estimated Annual Reporting: The estimated average annual reporting for this data collection is approximately 138 hours per hospital. The estimated annual burden is as follows:

Form name	No. of respondents	Responses per respondent	Total responses	Hours per response	Total hour burden
Form E (Short)	42	1	42	99.9	4,194
Form E (Long)	12	1	12	46.7	560
Form F (Short)	42	1	42	8	336
Form F (Long)	12	1	12	8	96
IME Data	54	1	54	14	756
Required GPRA Tables	54	1	54	28	1,512
Total	54				7,454

National Health Objectives for the Year 2000

The Public Health Service is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, and its successor, Healthy People 2010. These are Department-led efforts to set priorities for national attention. The CHGME program is related to the priority area 1 (Access to Quality Health Services) in Healthy People 2010, which is available online at http://www.health.gov/healthypeople/.

Education and Service Linkage

As part of its long-range planning, HRSA will be targeting its efforts to strengthening linkages between Department education programs and programs which provide comprehensive primary care services to the underserved.

Smoke-Free Workplace

The Department strongly encourages all award recipients to provide a smoke-free workplace and promote abstinence from all tobacco products, and Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

This program is not subject to the Public Health Systems Reporting Requirements.

Dated: May 17, 2000.

Claude Earl Fox,

Administrator, Health Resources and Services Administration.

Dated: April 11, 2000.

Donna E. Shalala,

Secretary.

[FR Doc. 00–15332 Filed 6–16–00; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4564–N–04]

Notice of Proposed Information Collection: Healthy Homes Initiative

AGENCY: Office of Lead Hazard Control

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* August 18, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Ms. Gail Ward, Reports Liaison Officer, Department of Housing and Urban Development, 451 7th St., SW, Room P3206, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Ellen R. Taylor (202) 755–1785 ext. 116 (this is not a toll free number), for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance

the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Healthy Homes Initiative.

OMB Control Number: To be assigned.

Need For the Information and Proposed Use: This information collection is required in connection with the management of grants or cooperative agreements related to evaluation and control of housing based hazards, funded by HUD as part of the Healthy Homes Initiative. Healthy Homes is authorized by the Housing Development Act of 1970. To date, seven programs have received FY 1999 funding totaling $8.5 million. HUD anticipates that this level of grant activity will continue in FY 2000 and succeeding years.

Results from these grants or cooperative agreements will be used to provide protocols, materials and information to other Healthy Homes programs. It is anticipated that this will increase the effectiveness of residential hazard reduction interventions, while improving the cost-effectiveness of the entire process. This activity should contribute to reducing housing based hazards and improving the health and safety of children and their families.

Agency Form Numbers: None.

Members of Affected Public: Potential applicants and grantees include non-profit and for-profit organizations, academic institutions, and state and local governments.

Total Burden Estimate:

	Number of respondents	Frequency of responses	Hours per response	Burden hours
Grantees	7	3	2	63
Future Grantees	14	3	2	126
Applicants	18	1	2	36
Total Estimated Burden Hours:				25

Status of the Proposed Information Collection: New Collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: June 8, 2000.

David E. Jacobs,

Director, Office of Lead Hazard Control.

[FR Doc. 00–15344 Filed 6–16–00; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4561–N–37]

Notice of Submission of Proposed Information Collection to OMB Contractor's/Mortgagor's Cost Breakdown/Certifications

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* July 19, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Q, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail Wayne_Eddins@HUD.gov; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of proposal: Contractor's/Mortgagor's Cost Breakdown/Certifications.

OMB Approval Number: 2502–0044.

Form Numbers: HUD–2328, HUD–92330–A, HUD–2205–A.

Description of the Need for the Information and its Proposed use: This information is collected from mortgagors and contractors to manage and monitor the process of advancing mortgage proceeds for multifamily mortgages on new or rehabilitated housing.

Respondents: business or other for-profit institutions.

Frequency of Submission: One time for each subject multifamily project.

Reporting Burden:

Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
925		1		24		10,200

Total Estimated Burden Hours: 10,200.

Status: Reinstate information collection with change.

Authority: Selection 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: June 13, 2000.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 00–15343 Filed 6–16–00; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4561–N–38]

Notice of Submission of Proposed Information Collection to OMB; HOPE for Homeownership of Single Family Homes Program (HOPE 3)

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* July 19, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2506–0128) and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Q, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail: Wayne__Eddins@HUD.gov; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department. This Notice also lists the following information:

Title of Proposal: HOPE for Homeownership of Single Family Homes Program (HOPE 3).

OMB Approval Number: 2506–0128.

Form Numbers: HUD–40086, 40103, 40104 and 40135.

Description of the Need for the Information and Its Proposed Use: HOPE 3 is designed to provide homeownership opportunities for families in certain single family housing, authorized by the National Affordable Housing Act.

Respondents: Not-for-profits and Institutions, State, Local, or Tribal Governments.

Frequency of Submission: On occasion and annually.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection	158		1		37		5,846

Total Estimated Burden Hours: 5,846.

Status: Revision of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: June 13, 2000.

Wayne Eddins,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 00–15366 Filed 6–16–00; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4560–C–07]

FY 2000 Super Notice of Funding Availability (SuperNOFA) for HUD's Housing, Community Development and Empowerment Programs and Section 8 Housing Voucher Assistance; Notice of Administrative Error in Processing of FY 1999 Mainstream Program NOFA and Correction of Error Through Processing of FY 2000 Mainstream Program NOFA

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Super Notice of Funding Availability (SuperNOFA) for HUD grant programs; correction of administrative error in processing of FY 1999 Mainstream Program NOFA through Processing of FY 2000 Mainstream Program NOFA.

SUMMARY: On February 24, 2000, HUD published its Fiscal Year (FY) 2000 Super Notice of Funding Availability (SuperNOFA) for HUD's Housing, Community Development, and Empowerment Programs and Section 8 Housing Voucher Assistance. This document provides notification to the public that as a result of an administrative error in the processing of the FY 1999 NOFA for Mainstream Housing Opportunities for Persons with Disabilities (Mainstream Program), five public housing agencies (PHAs) were inadvertently omitted from the FY 1999 Mainstream Program NOFA, and these five PHAs will be automatically entered into the FY 2000 Mainstream Program NOFA without further application submission.

DATES: This notice does not revise or extend the application due date for the

FY 2000 Mainstream NOFA as provided in the FY 2000 SuperNOFA, or revise any other aspect of that NOFA. The application due date for the FY 2000 Mainstream NOFA remains July 18, 2000.

FOR FURTHER INFORMATION CONTACT: You may contact George C. Hendrickson, Housing Program Specialist, Room 4216, Office of Public and Assisted Housing Delivery, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1872, ext. 4064, or you may contact the Grants management Center at (202) 358–0338. (These are not toll-free numbers.) Persons with hearing or speech impairments may access these numbers via TTY (text telephone) by calling the Federal Information Relay Service at 1–800–877–8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION: On February 24, 2000 (65 FR 9322), HUD published its Fiscal Year (FY) 2000 Super Notice of Funding Availability (SuperNOFA) for HUD's Housing, Community Development, and Empowerment Programs and Section 8 Housing Voucher Assistance. The FY 2000 SuperNOFA announced the availability of approximately $2,424 billion in HUD program funds covering 39 grant categories within programs operated and administered by HUD offices and Section 8 housing voucher assistance. The SuperNOFA included an announcement of funding availability under the Mainstream Housing Opportunities for persons with Disabilities Program (Mainstream Program) (*see* 65 FR at 9963).

This document provides notification to the public that as a result of an administrative error in the processing of the FY 1999 NOFA for the Mainstream Program (64 FR 11302) (which was published separately; the FY 1999 NOFA was not part of the FY 1999 SuperNOFA), five public housing agencies (PHAs) were inadvertently omitted from the FY 1999 Mainstream NOFA lottery.

The five PHAs are the following: The Housing Authority of Rockville, Maryland; the Housing Authority of Prince Georges County, Largo, Maryland; the Virginia Housing Authority Development Agency, Richmond, VA; the Fairfax County Regional Housing Authority, Fairfax, Virginia; and the District of Columbia Housing Authority, Washington, DC. These five PHAs will be automatically entered into the FY 2000 Mainstream NOFA lottery without further application submission.

Dated: June 9, 2000.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 00–15341 Filed 6–16–00; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. FR–4570–C–03]

Notice of Funding Availability for Fair Share Allocation of Incremental Voucher Funding Fiscal Year 2000; Correction to NOFA Regarding Residency Preference and Extension of Application Period

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of Fund Availability (NOFA); Correction of NOFA and Extension of Application Period.

SUMMARY: On March 10, 2000, HUD published its FY 2000 NOFA for Fair Share Allocation of Incremental Voucher Funding (''Fair Share NOFA''). The selection criteria of the NOFA were amended by notice published on May 18, 2000, to better reflect the appropriate weight in points that should have been assigned to the ''housing needs'' selection criterion so that need is the most important basis for allocating incremental voucher funding. The May 18, 2000 amendatory notice also reopened the application period for the Fair Share NOFA. The May 18, 2000 notice provided for a new application due date of June 19, 2000. This notice corrects the percentage listed in the residency preference subcategory of Selection Criterion 2. The percentage listed in the May 18, 2000, notice was 15% and the percentage should have been inserted was 50%. This document makes that correction, and also extends the application due date further—30 days from the date of publication of this notice.

DATES: Applications are due on July 19, 2000. Applicants that already submitted applications need not resubmit a new application, and need not amend their applications. Applicants that already submitted applications, however, may submit new or amended applications if they so choose.

SUPPLEMENTARY INFORMATION:

Background—March 10, 2000 NOFA

If you are interested in applying for funding under the Fair Share NOFA, and did not apply earlier, please review the entire Fair Share NOFA, published on March 10, 2000 (65 FR 13222), as amended by the notice published on May 18, 2000 (65 FR 31584). Except for the additional correction made by this document and the extension of the application due, all other provisions of the March 10, 2000, Fair Share NOFA, as amended on May 18, 2000, are unchanged and remain applicable.

The March 10, 2000 Fair Share NOFA will provide you with detailed information regarding the submission of an application, Section 8 program requirements, the application selection process to be used by HUD in selecting applications for funding, and other valuable information relative to a PHA's application submission and participation in the program covered by this NOFA. The March 10, 2000 Fair Share NOFA is also available on HUD's internet site at http://www.hud.gov under ''Funds Available.'' This **Federal Register** notice amending the March 10, 2000 Fair Share NOFA is also available at the same HUD web site.

Correction Made by this Notice

This notice corrects an error made in the publication of the May 18, 2000, notice. The May 18, 2000 notice amended the selection criteria in Section IV of the March 10, 2000 Fair Share NOFA primarily to better reflect the appropriate weight in points that should have been assigned to the ''housing needs'' selection criterion so that need is the most important basis for allocating incremental voucher funding. Weights of other criteria were reduced accordingly. The May 18, 2000, notice also revised or removed two selection criteria that do not assess a public housing agency's housing needs and are otherwise problematic. The revision made by the May 18, 2000 notice was to the residency preference subcategory in selection criterion 2 of the NOFA. That subcategory was altered to provide for the assignment of points to PHAs that will limit applicability of residency preferences to 15% of all new admissions to the program, as well as to those PHAs that do not have a residency preference or agree to eliminate one. This change was made in recognition that some PHAs with legally adopted residency preferences and great housing needs would have been penalized by the language provided in the March 10, 2000, Fair Share NOFA. The applicability of residency preferences to 15% of all new admissions was incorrect. The percentage limitation was intended to be 50%.

This notice published in today's edition of the **Federal Register** makes

that correction and provides for an additional extension of the application due date, which is 30 days from the date of today's publication.

This notice does not repeat the application submission information. That information was set out in the March 10, 2000 NOFA (64 FR 13222) and also the May 18, 2000 amendatory notice (65 FR 31584).

As noted earlier, applicants that already submitted applications by the original application due date of April 24, 2000, or the extended due date of June 19, 2000, need not resubmit a new application, and need not amend their applications. Applicants that have provided a certification which would have entitled them to points with respect to residency preferences, and that still will comply with the certification they provided, need not submit a further certification to receive the points. Applicants that already submitted applications, however, may submit new or amended applications if they so choose.

Submission of new or amended applications should clearly identify the name of the applicant, the applicant HA code (*e.g.* CA002), and whether the information submitted is new and replaces a previously submitted application in its entirety or is an addendum to the previously submitted application.

Accordingly, in the FY 2000 NOFA for Fair Share Allocation of Incremental Voucher Funding, notice document 00–6027, beginning at 65 FR 13222, in the issue of Friday, March 10 2000, as amended by the notice published on May 18, 2000, beginning at 65 FR 31584, the following correction is made to Selection Criterion 2 (Efforts of PHA to Provide Area-Wide Housing Opportunities for Families), the second full paragraph under paragraph (b) of Selection Criterion 2:

IV. Fair Share Application Rating Process

* * * * *

(2) Selection Criterion 2: Efforts of PHA to Provide Area-Wide Housing Opportunities for Families (30 points).

* * * * *

• 5 Points—Assign 5 points if the PHA certifies that (i) its administrative plan does not include a ''residency preference'' for selection of families to participate in its voucher program, or (ii) it will eliminate immediately any ''residency preference'' currently in its administrative plan, or (iii) it will limit applicability of residency preferences to 50% of all new admissions to the voucher program.

* * * * *

Dated: June 13, 2000.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 00–15365 Filed 6–16–00; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of a Draft Environmental Assessment and Preliminary Finding of No Significant Impact, and Receipt of an Application for an Incidental Take Permit for a Proposed Commercial Development Called Bella Vista Retail Center Located in Highlands County, Florida

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

The 81 + 3 Florida, Inc. company (Applicant) requests an incidental take permit (ITP) pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973 (U.S.C. 1531 *et seq.*), as amended (Act). The Applicant anticipates taking 20.7 acres of sand skink (*Neoseps reynoldsi*) and bluetail mole skink (*Eumeces egregius lividus*) habitat, incidental to the development of a commercial retail center in section 23, Township 34 South, Range 28 East, Sebring, Highlands County, Florida. The Applicant proposes to mitigate the taking of skinks through fee title acquisition of at least 41.4 acres of suitable skink habitat within the range of the species.

Land clearing, infrastructure installation and commercial construction will destroy 20.7 acres of habitat known to be occupied by sand and bluetail mole skinks. A more detailed description of the mitigation and minimization measures to address the effects of the Project to the protected species are outlined in the Applicant's Habitat Conservation Plan (HCP), the Service's draft Environmental Assessment (EA), and in the **SUPPLEMENTARY INFORMATION** section below.

The Service also announces the availability of a draft EA and HCP for the incidental take application. Copies of the draft EA and/or HCP may be obtained by making a request to the Regional Office (see **ADDRESSES**). Requests must be in writing to be processed. This notice also advises the public that the Service has made a preliminary determination that issuing the ITP is not a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969, as amended (NEPA). The preliminary Finding of No Significant Impact (FONSI) is based on information contained in the draft EA and HCP. The final determination will be made no sooner than 30 days from the date of this notice. This notice is provided pursuant to Section 10 of the Act and NEPA regulations (40 CFR 1506.6).

The Service specifically requests information, views, and opinions from the public via this Notice on the federal action, including the identification of any other aspects of the human environment not already identified in the Service's draft EA. Further, the Service is specifically soliciting information regarding the adequacy of the HCP as measured against the Service's ITP issuance criteria found in 50 CFR Parts 13 and 17.

If you wish to comment, you may submit comments by any one of several methods. Please reference permit number TE026107–0 in such comments, or in requests of the documents discussed herein. You may mail comments to the Service's Regional Office (see **ADDRESSES**). You may also comment via the internet to ''david_dell@fws.gov''. Please submit comments over the internet as an ASCII file avoiding the use of special characters and any form of encryption. Please also include your name and return address in your internet message. If you do not receive a confirmation from the Service that we have received your internet message, contact us directly at either telephone number listed below (see **FURTHER INFORMATION**). Finally, you may hand deliver comments to either Service office listed below (see **ADDRESSES**). Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the administrative record. We will honor such requests to the extent allowable by law. There may also be other circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and address, you must state this prominently at the beginning of your comments. We will not; however, consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of

organizations or businesses, available for public inspection in their entirety.

DATES: Written comments on the ITP application, draft EA, and HCP should be sent to the Service's Regional Office (see **ADDRESSES**) and should be received on or before July 19, 2000.

ADDRESSES: Persons wishing to review the application, HCP, and draft EA may obtain a copy by writing the Service's Southeast Regional Office, Atlanta, Georgia. Documents will also be available for public inspection by appointment during normal business hours at the Regional Office, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Endangered Species Permits), or Field Supervisor, U.S. Fish and Wildlife Service, Post Office Box 2676, Vero Beach, Florida 32961–2676.

FOR FURTHER INFORMATION CONTACT: Mr. David Dell, Regional HCP Coordinator, (see **ADDRESSES** above), telephone: 404/679–7313, facsimile: 404/679–7081; or Mr. Mike Jennings, Fish and Wildlife Biologist, South Florida Ecosystem Office, Vero Beach, Florida (see **ADDRESSES** above), telephone: 561/562–3909.

SUPPLEMENTARY INFORMATION: Sand skinks and bluetail mole skinks are restricted to dry, sandy uplands (xeric communities) in southcentral peninsular Florida. These areas are predominated by deep, well drained soils, and drought tolerant plant species. Sand and bluetail mole skinks are found primarily in sandy areas within xeric uplands. Sand skinks are mostly found on the soil surface or under leaf litter. Bluetail mole skinks are fossorial and remain underground throughout their life.

Due to its high elevation and tendency to remain dry, historic skink habitat was favored by early settlers and subsequently attracted urban and agricultural development. Human settlement has resulted in an estimated 85 percent loss of xeric communities, which has likely adversely affected the distribution and numbers of sand and bluetail mole skinks.

Quantification of historic or current population size and distribution of skinks is difficult because these species are difficult to survey; they are small and hard to locate due to their semi- (sand skink) to completely fossorial (bluetail mole skink) habits. Although widespread, definitive surveys are usually not practicable for these species, existing soils data can provide insight into the distribution of suitable habitat and the subsequent loss of such habitat to anthropogenic causes.

Much of the historic skink habitat occurred along a 100-mile stretch of parallel ancient dunes that were situated on a north-south axis from Orange to Highlands counties. This area is exposed to frequent lightning strikes which resulted in the evolution of plant and animal species that became dependant on frequent fires to persist. Due to the effects of urbanization and agricultural development, historic skink habitat has been reduced in size and has become fragmented. As a consequence of habitat fragmentation, much of the remaining habitat for skinks is poor quality due to the lack of periodic fires brought on by post-settlement fire exclusion.

Sand skinks and bluetail mole skinks are currently known from 115 and 36 locations, respectively, including the Project site. Issuance of the Permit to the Applicant would result in a loss of 0.9 percent (1/115) of the known localities of sand skinks and 2.8 percent (1/36) of known localities of bluetail mole skinks. These figures probably overestimate the percentage loss since not all potentially suitable habitat throughout the range of these species has been surveyed. The effects that loss of sand skinks and habitat within the Project site will have on the local population of skinks is not known.

Construction of the Project's infrastructure and facilities will result in death of, or injury to, sand skinks and bluetail mole skinks, incidental to the carrying out of these otherwise lawful activities. Habitat alteration associated with the proposed commercial development will reduce the availability of feeding, nesting, and sheltering habitat for these species.

The draft EA considers the environmental consequences of two action alternatives, both of which would require issuance of an ITP. The preferred alternative would affect about 20.7 acres suitable sand and bluetail mole skink habitat. The reduced take alternative would affect about 15 acres of suitable sand and bluetail mole skink habitat. The no action alternative (not issue the ITP) may result in loss of habitat for federally listed species described above and exposure of the Applicant under Section 9 of the Act. The proposed action alternative is issuance of the ITP according to the HCP as submitted and described above. Under the proposed alternative, two mitigation alternatives exists, both of which will result in the acquisition, protection, and management suitable skink habitat off-site. Habitat acquisition and management will be achieved through one of two mitigation alternatives; fee-simple purchase of a minimum of 41.7 acres of suitable skink habitat or deposit of sufficient funds into an escrow account to acquire and manage a minimum of 41.7 acres of suitable skink habitat. Under the first mitigation alternative, the Permittee would purchase habitat adjacent to Archbold Biological Station (ABS) (a non-profit conservation and research facility in southern Highlands County) and subsequently transfer title of such lands to ABS. ABS would assume responsibility for perpetual management of the acquired habitat. Under the second mitigation alternative, the Permittee would escrow sufficient funds to acquire and manage a minimum of 41.7 acres of suitable skink habitat adjacent to ABS. The Nature Conservancy (TNC) would act as intermediary in this case and use the escrowed funds to acquire suitable skink habitat and subsequently convey fee-title of acquired habitat to ABS. A conservation easement of the acquired lands would also be developed between TNC and ABS.

As stated above, the Service has made a preliminary determination that the issuance of the ITP is not a major Federal action significantly effecting the quality of the human environment within the meaning of Section 102(2)(C) of NEPA. This preliminary determination may be revised due to public comment received in response to this notice and is based on information contained in the draft EA and HCP.

The Service will also evaluate whether the issuance of a Section 10(a)(1)(B) ITP complies with Section 7 of the Act by conducting an intra-Service Section 7 consultation. The results of the biological opinion, in combination with the above findings, will be used in the final analysis to determine whether or not to issue the ITP.

Dated: June 12, 2000.

Sam D. Hamilton,

Regional Director.

[FR Doc. 00–15369 Filed 6–16–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Docket No. OR–020–1020–DE; G–0247]

Meeting Notice for the Southeast Oregon Resource Advisory Council

SUMMARY: The Southeast Oregon Resource Advisory Council will meet at the Bureau of Land Management, Burns District Office, HC 74–12533 Hwy 20 West, Hines, Oregon 97738, 8:00 a.m. to

5:00 p.m., Pacific Daylight Time (PDT), on Thursday, July 20, 2000, and conduct an access and restoration field tour from 8:00 a.m. to 2:00 p.m., on Friday, July 21, 2000. Topics to be discussed by the Council include Interim Sage Grouse Guidelines update, Steens Mountain Designation update, Owyhee River Canyon Litigation update, Off-Highway Vehicle Strategy, Southeastern Oregon Resource Management Plan update, Lakeview Resource Management Plan (RMP) update, and such other matters as may reasonably come before the Council. The entire meeting is open to the public. Public comment is scheduled for 11:00 a.m. to 11:30 a.m. PDT on Thursday, July 20, 2000.

An optional BLM Lakeview RMP field tour will meet on Wednesday, July 19, 2000, at 7:00 a.m. at the BLM Lakeview Interagency Office to participate in discussions and issues concerning the Lakeview RMP. Additional information concerning the Lakeview RMP optional field tour may be obtained from Dwayne Sykes, RMP Team Leader, Lakeview Interagency Office, 1300 South G Street, Lakeview, Oregon 97630, (541) 947–2177, or *Duayne_ Sykes@or.blm.gov.*

The Southeast Oregon Resource Advisory Council will meet again the following dates in the year 2000.

DATES: 10/19–20/2000.

PLACE/LOCATION: Lakeview District Office, BLM; Lakeview, Oregon.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the Southeast Oregon Resource Advisory Council may be obtained from Holly_LaChapelle, Resource Assistant, Burns District Office, HC 74–12533 Hwy 20 West, Hines, Oregon, 97738, (541) 573–4501, or *Holly LaChapelle@or.blm.gov* or from the following web site <*http://www.or.blm.gov/SEOR–RAC*>.

Dated: June 8, 2000.

Craig M. Hansen,

Three Rivers Resource Area Field Manager.

[FR Doc. 00–15335 Filed 6–16–00; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before June 10, 2000.

Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240. Written comments should be submitted by July 5, 2000.

Carol D. Shull,

Keeper of the National Register.

ARKANSAS

Cleveland County

Federal Building, 20 Magnolia St., Rison, 00000752

GEORGIA

Appling County

United States Post Office—Baxley, Georgia, 124 Tippins St., Baxley, 00000755

De Kalb County

United States Post Office—Decatur, Georgia, 141 Trinity Place, Decatur, 00000753

Troup County

Stark Mill and Mill Village Historic District, Roughly bounded by Lincoln, Askew, Church, Keith, and Brazil Sts, Whaley Ave. and the Hogansville city limits, Hogansville, 00000754

IDAHO

Canyon County

Dorman, Henry W. and Ida Frost, House, 114 Logan St., Caldwell, 00000756

KANSAS

Dickinson County

Brewer Scout Cabin, Solomon City Park, 100 E. 4th St., Solomon, 00000770

Doniphan County

St. Martha's AME Church and Parsonage, SW corner of Main and Canada, Highland, 00000757

Johnson County

McCarthy, John, House, 19700 Sunflower Rd., Edgerton, 00000758

MAINE

Aroostook County

Maple Grove Friends Church, West Side of Rte 1–A, 0.25 mi. N of jct with Upcountry (Fairmount Rd.), Maple Grove, 00000764

Monticello Grange #338, Main St., 0.7 mi. S of jct. with Muckatee Rd., Monticello, 00000760

Hancock County

St. Mary's-By-The-Sea, 20 S. Shore Rd., Northeast Harbor, 00000761

Sagadahoc County

Mill Cove School, West Side of Berrys Mill Rd., 0.1 mi S. of jct. with Hill Rd., Bath, 00000763

Somerset County

Pittston Farm, West End of Seboomook Lake, at Confluence with the S. Branch of Penobscot R., Pittston Academy Grant, 00000762

Washington County

Union Church, (former), Main St., 0.1 mi NE of jct. with Addison Rd., Columbia Falls, 00000759

NEBRASKA

Buffalo County

Kearney Junior High School, 300 W. 24th St., Kearney, 00000766

Cedar County

Saints Peter and Paul Catholic Church Complex, 106 W. 889th Rd., Bow Valley, 00000765

Chase County

Balcony House, 1006 Court St., Imperial, 00000767

Hall County

Gloe Brothers Service Station, 609 E. 11th St., Wood River, 00000768

NORTH CAROLINA

Lee County

Hawkins Avenue Historic District, (Lee County MPS) Roughly bounded by Hill Ave., First St., Charlotte Ave., and Horner Blvd., Sanford, 00000771

TENNESSEE

Haywood County

Republican Primitive Baptist Church, (Rural African-American Churches in Tennessee MPS) 350 Raymond Taylor Rd., Brownsville, 00000769

TEXAS

Bexar County

Lavaca Historic District, Roughly bounded by S. Alamo St., S. Presa St., alley bet. Camargo St., Callahan Ave., Labor St., and Garfield Alley, San Antonio, 00000773

San Antonio City Cemeteries Historic District, Old, Roughly bounded by Nevada, New Braunfels, Paso Hondo, Palmetto, Potomac, St. James, Pine, E. Commerce, Dakota, Monumenta–San Antonio, 00000772

VIRGINIA

Newport News Independent city

First Baptist Church—Newport News, 119 29th St., Newport News, 00000774

WEST VIRGINIA

Mason County

McCausland, Gen. John, House (Boundary Increase), Grape Hill, Leon, 00000778

Mineral County

Stewart's Tavern, Short Gap Rd., Short Gap, 00000776

Morgan County

Sunset Hill, Flat Mountian Rd., Alderson, 00000777

Putnam County

Putnam County Courthouse, 3389 Winfield Rd., Winfield, 00000775

WISCONSIN

Ozaukee County

Moquon Town Hall and Fire Station Complex, 11333 N. Cedarburg Rd., Mequon, 00000779

Wood County

Pleasant Hill Residential Historic District, Roughly bounded by E. First St., Ash Ave., E. Fourth St., and S. Cedar Ave., Marshfield, 00000780

[FR Doc. 00–15373 Filed 6–16–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[INT–FES 00–21]

Bostwick Division, Frenchman-Cambridge Division, and Kanaska Division, Almena Unit

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability for Final Environmental Impact Statement (FEIS).

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, the Department of the Interior, Bureau of Reclamation, has completed the FEIS on the renewal of one long-term water service contract and the conversion of four long-term water service contracts to repayment contracts for irrigation water from Federal projects in the Republican River basin in Nebraska and Kansas. The FEIS describes six alternatives, including no action and a new ''Negotiated Alternative,'' and evaluates the environmental consequences of renewing the long-term water service contract, the conversion to repayment contracts, and the modifications to district operations.

Reclamation's proposed action is to renew the long-term water service contract for the Frenchman Valley Irrigation District and convert long-term water service contracts for the Frenchman-Cambridge, Bostwick in Nebraska, Kansas-Bostwick, and Almena irrigation districts. The proposed action exercises the provisions of several Federal laws applicable to Reclamation.

ADDRESSES: Printed copies of a Summary of the FEIS or the entire FEIS (with appendices) may be obtained from Judy O'Sullivan, Nebraska-Kansas Area Office, P.O. Box 1607, Grand Island NE 68802 or by telephone at (308) 389–4622 x211. Copies are also available for public inspection and review on the Internet at ''www.gp.usbr.gov'' in the ''Current Activities'' section under ''Environmental Activities.''

See Supplementary Information section for additional addresses where the FEIS is available for public inspection and review.

FOR FURTHER INFORMATION CONTACT: Jill Manring, Basin Study Coordinator, Nebraska-Kansas Area Office, P.O. Box 1607, Grand Island NE 68802—telephone (308) 389–4622 x214.

SUPPLEMENTARY INFORMATION:

FEIS Public Inspection and Review Locations

Offices

- Bureau of Reclamation, Nebraska-Kansas Area Office, 203 West Second Street, Grand Island NE 68801—telephone (308) 389–4622
- Bureau of Reclamation, Great Plains Regional Office, 316 North 26th Street, Billings MT 59101—telephone (406) 247–7638
- Bureau of Reclamation, Reclamation Service Center Library, Building 67, Room 167, Denver Federal Center, Sixth and Kipling, Denver CO 80225—telephone (303) 445–2072
- Bureau of Reclamation, Program Analysis Office, Room 7456, 1849 C Street NW, Washington DC 20240—telephone (202) 208–4662
- Bostwick Irrigation District in Nebraska, Red Cloud NE
- Kansas Bostwick Irrigation District No. 2, Courtland KS
- Frenchman-Cambridge Irrigation District, Cambridge NE
- Frenchman Valley Irrigation District, Culbertson NE
- Almena Irrigation District No. 5, Almena KS

Libraries

- Alma Public Library, West Second Street, Alma NE 68920–3378
- Blue Hill Public Library, 317 West Gage Street, Blue Hill NE 68930–2068
- Butler Memorial Library, 621 Pennsylvania, Cambridge NE 69022
- Franklin Public Library, 1502 P Street, Franklin NE 68939–1200
- Hastings Public Library, 517 West Fourth Street, Hastings NE 68901–7560
- Imperial Public Library, 703 Broadway Street, Imperial NE 69033–4017
- Kearney Public Library, 2020 First Avenue, Kearney NE 68847–5306
- McCook Library, 802 Norris Avenue, McCook NE 69001–3143
- Nelson Public Library, 10 West Third Street, Nelson NE 68961–1246
- Red Cloud Public Library, 537 North Webster Street, Red Cloud NE 68970–2421
- Carnegie Public Library, 449 North Kansas Street, Superior NE 68978–1852
- Trenton Village Library, 406 East First Street, Trenton NE 69044
- Wauneta City Library, 319 North Tecumseh, Wauneta NE 69045–2011
- Almena Public Library, 415 Main, Almena KS 67622
- Belleville Public Library, 1327 Nineteenth Street, Belleville KS 66935
- Courtland City Library, 403 Main Street, Courtland KS 66939
- Northwest Kansas Library System, 2 Washington Square, Norton KS 67654

The FEIS considers the effects of renewing one long-term water service contract and converting four long-term water service contracts to repayment contracts. The authority for contract renewal and conversion is found in the Act of July 2, 1956, 70 Stat. 483, and the Act of June 21, 1963, 77 Stat. 68, which requires the Secretary of the Department of the Interior to renew long-term water service contracts and to convert long-term water service contracts to repayment contracts upon request.

Federally-developed impoundments in the Republican River Basin have been providing supplemental irrigation water to the irrigation districts since 1956. These irrigation districts include the Almena, Bostwick, Frenchman Valley, Frenchman-Cambridge, and Kansas-Bostwick irrigation districts. The original long-term water service contracts had terms of 40 years and began to expire in 1996. In order to continue the rights and obligations of the original contracts during the contract renewal process, these contracts were extended for an additional four years as authorized by Congress in the Irrigation Project Extension Act of 1996, Public Law 104–326.

The long-term water service contract with the Frenchman Valley Irrigation District will have a term of 40 years beginning on January 1, 2001. The repayment contracts with the Almena, Bostwick, Frenchman-Cambridge, and Kansas-Bostwick irrigation districts will each have a repayment period of 40 years.

The FEIS evaluated six alternatives, including the No Action Alternative and a new Negotiated Alternative, and described the environmental consequences of contract renewal and conversion. The following issues are considered in the FEIS: water resources, water quality, recreation, regional income, environmental justice, reservoir riparian vegetation, riverine riparian vegetation, wetlands, threatened and endangered species, avian and terrestrial wildlife, migratory waterfowl, aquatic resources, biodiversity, Indian trust assets, cultural resources, sacred sites, and cumulative impacts.

The terms and conditions of the proposed long-term water service and repayment contracts represent Reclamation's preferred alternative described as the Negotiated Alternative in the FEIS. The Negotiated Alternative combines features of the Irrigation and Multi-Use alternatives that are designed to continue delivery of irrigation water and maintain limited reservoir recreation and fisheries. When compared to the No Action Alternative, there are no significant environmental, socioeconomic, or agricultural impacts associated with the Negotiated Alternative. The current operations of some of the reservoirs will be modified to establish a new minimum pool elevation to benefit reservoir recreation and fisheries.

Ten Indian tribes, the Mni-SOSE Intertribal Water Rights Coalition, and the Bureau of Indian Affairs, have been contacted regarding Indian trust assets that may be affected by the proposed action. No potentially-affected Indian trust assets have been identified.

The DEIS was issued on October 14, 1999. Responses to comments received from agencies, interested organizations, and individuals on the DEIS are addressed in the FEIS. No decision will be made on the proposed action until 30 days following the release of the FEIS. Following the 30-day waiting period, Reclamation will complete and sign a Record of Decision (ROD). The ROD will describe the action to be implemented and will discuss factors contributing to that decision.

Dated: June 6, 2000.

Fred R. Ore,

Area Manager, Nebraska-Kansas Area Office.

[FR Doc. 00–14810 Filed 6–16–00; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

Certain Pipe and Tube From Argentina, Brazil, Canada, India, Korea, Mexico, Singapore, Taiwan, Thailand, Turkey, and Venezuela [1]

AGENCY: United States International Trade Commission.

ACTION: Reopening of the record and request for additional comments on the subject 5-year reviews.

SUMMARY: On June 8, 2000, the U.S. International Trade Commission (the Commission) reopened the record in the above reviews for the purpose of considering new factual information, submitted by any person and not already submitted for the record, regarding the agreement between Siderca SA of Argentina and the United Steelworkers of America concerning the planned reactivation of the steel tube mill located in Sault Ste. Marie, Ontario, Canada, formerly operated by Algoma Steel Inc. of Canada, for the production of oil country tubular goods (65 FR 37409, June 14, 2000).

The Commission hereby gives notice that it is reopening the record in these reviews for the additional purpose of considering new factual information, submitted by any person and not already submitted for the record, regarding the announced merger of Maverick Tube Corp. of the United States and Prudential Steel Ltd. of Canada.

The Commission is not reopening the record for any purpose other than to receive new factual information from any person on these issues only and comments from any party on this new factual information. The record reopened on June 8, 2000, and will close on June 14, 2000. On June 15, 2000, the Commission will make available to parties all information on which they have not had an opportunity to comment.

On or before June 19, 2000, parties may submit final comments, not to exceed 10 pages, double-spaced and single-sided, on stationery measuring 8½ by 11 inches, addressing only new factual information released to parties on June 15, 2000, regarding the two issues detailed above, but such final comments must not contain any new factual information not previously submitted for the record and must otherwise comply with section 207.68 of the Commission's rules.

All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain business proprietary information (BPI) must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16© and 207.3 of the Commission's rules, each document filed by a party to these reviews must be served on all other parties to these reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

For further information concerning the reviews see the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and F (19 CFR part 207).

EFFECTIVE DATE: June 13, 2000.

FOR FURTHER INFORMATION CONTACT: Brian R. Allen (202–708–4728), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*).

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

Issued: June 14, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–15385 Filed 6–16–00; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–853 (Final)]

Certain Structural Steel Beams From Japan

Determination

On the basis of the record [1] developed in the subject investigation, the United States International Trade Commission determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in

[1] The products and investigation numbers for the various countries are: Argentina: light-walled rectangular tube (731–TA–409); Brazil: circular welded nonalloy steel pipe (731–TA–532); Canada: oil country tubular goods (731–TA–276); India: welded carbon steel pipe and tube (731–TA–271); Korea: circular welded nonalloy steel pipe (731–TA–533); Mexico: circular welded nonalloy steel pipe (731–TA–534); Singapore: small diameter standard and rectangular pipe and tube (731–TA–296); Taiwan: small diameter carbon steel pipe and tube (731–TA–132), oil country tubular goods (731–TA–277), light-walled rectangular tube (731–TA–410), and circular welded nonalloy steel pipe (731–TA–536); Turkey: welded carbon steel pipe and tube (701–TA–253 and 731–TA–273); Thailand: welded carbon steel pipe and tube (731–TA–252); and Venezuela: circular welded nonalloy steel pipe (731–TA–537).

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

the United States is materially injured [2] or threatened with material injury[3] by reason of imports from Japan of certain structural steel beams, provided for in subheadings 7216.32.00, 7216.33.00, 7216.50.00, 7216.61.00, 7216.69.00, 7216.91.00, 7216.99.00, 7228.70.30, and 7228.70.60 of the Harmonized Tariff Schedule of the United States, 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 this investigation effective July 7, 1999, following receipt of a petition filed with the Commission and the Department of Commerce by Northwestern Steel & Wire Co., Sterling, IL; Nucor-Yamato Steel Co., Blytheville, AR; TXI-Chaparral Steel Co., Midlothian, TX; and The United Steelworkers of America AFL–CIO. The final phase of the investigation was scheduled by the Commission following notification of a preliminary determination by the Department of Commerce that imports of certain structural steel beams from Japan 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 investigation 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 March 1, 2000 (65 FR 11092). The hearing was held in Washington, DC, on April 25, 2000, 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 June 9, 2000. The views of the Commission are contained in USITC Publication 3308 (June 2000), entitled Certain Structural Steel Beams from Japan: Investigation No. 731–TA–853 (Final).

By order of the Commission.

Issued: June 13, 2000.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–15384 Filed 6–16–00; 8:45 am]

BILLING CODE 7020–02–P

[2] Vice Chairman Miller and Commissioners Hillman and Okun determine that an industry in the United States is materially injured.

[3] Chairman Bragg and Commissioners Askey and Koplan determine that an industry in the United States is threatened with material injury. Further, Chairman Bragg and Commissioners Askey and Koplan determine, under section 735(b)(4)(B) of the Act (19 U.S.C. 1673d(b)(4)(B)), that they would not have made affirmative material injury determinations but for the suspension of liquidation.

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–851 (Final)]

Synthetic Indigo From China

Determination

On the basis of the record [1] developed in the subject investigation, the United States International Trade Commission 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 materially injured by reason of imports from China of synthetic indigo, provided for in subheadings 3204.15.10, 3204.15.40, and 3204.15.80 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV). The Commission further determines that critical circumstances exist with regard to imports of the subject merchandise.[2]

Background

The Commission instituted this investigation effective June 30, 1999 following receipt of a petition filed with the Commission and the Department of Commerce by Buffalo Color Corporation, Parsippany, NJ, and the United Steelworkers of America, AFL–CIO/CLC. The final phase of the investigation was scheduled by the Commission following notification of a preliminary determination by the Department of Commerce that imports of synthetic indigo from China 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 investigation 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 30, 1999 (64 FR 73581). The hearing was held in Washington, DC, on May 2, 2000, 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 June 12, 2000. The views of the Commission are contained in USITC Publication 3310 (June 2000), entitled Synthetic Indigo from China: Investigation No. 731–TA–851 (Final).

By order of the Commission.

Issued: June 13, 2000.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–15383 Filed 6–16–00; 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] Commissioners Stephen Koplan and Thelma J. Askey found that critical circumstances do not exist with regard to imports of the subject merchandise.

DEPARTMENT OF JUSTICE

Bureau of Justice Statistics

[OJP(BJS)–1286]

National Incident Based Reporting System (NIBRS) Implementation Program

AGENCY: Office of Justice Programs, Bureau of Justice Statistics, Justice.

ACTION: Solicitation for award of cooperative agreements.

SUMMARY: The purpose of this notice is to announce a public solicitation to make awards to states to provide funding to jurisdictions for implementing the National Incident Based Reporting System (NIBRS).

DATES: Proposals must be received by 5:00 p.m. ET on or before Monday, July 31, 2000.

ADDRESSES: Proposals should be mailed to: Application Coordinator, Bureau of Justice Statistics, Room 2406, 810 7th Street, NW., Washington, DC 20531, (202) 616–3497 [This is not a toll-free number].

FOR FURTHER INFORMATION CONTACT: Charles R. Kindermann, Ph.D., Senior Statistician, Bureau of Justice Statistics, (202) 616–3489, or Carol G. Kaplan, Chief, Criminal History Improvement Programs, (202) 307–0759 [This is not a toll-free number].

SUPPLEMENTARY INFORMATION:

Background

The Crime Identification Technology Act (CITA) provides funding to states (in conjunction with units of Local government) and tribes that want to participate in the FBI's new approach to uniform crime reporting, the National Incident-Based Reporting System (NIBRS). NIBRS moves beyond aggregate statistics and raw counts of crimes and arrests that comprise the

summary UCR program to individual records for each reported crime incident and its associated arrest. NIBRS looks at detailed offense, offender, victim, property, and arrest data. In addition to changing the fundamental reporting structure underlying crime and arrest information, NIBRS collects offense and arrest data on 22 crime categories, spanning 46 offenses (as compared to the 8 UCR index offenses), and additional offenses for which only arrest information is reported. The requirements for compatibility with NIBRS can be found at http://www.fbi.gov/publish/nibrs/nibrs.htm:

Objectives

The purpose of this solicitation is to make awards to states to provide funding to jurisdictions for implementing the National Incident Based Reporting System (NIBRS). The amount available under the FY 2000 appropriation is $10 million.

Type of Assistance

Assistance will be made available in the form of cooperative agreements.

Statutory Authority

The awards made pursuant to this solicitation will be funded by the Bureau of Justice Statistics consistent with the provisions of 42 U.S.C. 3732 and the Crime Identification Technology Act of 1998 (CITA), 42 U.S.C. 14601. A complete description of requirements and programs funded under CITA is available at the OJP CITA website http://www.ojp.usdoj.gov/cita.

Eligibility Requirements

The NIBRS awards will be made to states applying on behalf of one or more cities or counties in the state, regardless of whether the state maintains a UCR program. Within the state, requests may be made on behalf of one or more jurisdictions or a collaboration of jurisdictions. In addition, a state can apply for funding to be used at the state level, provided that the state also applies for funds on behalf of a city or county jurisdiction.

BJS will select the jurisdictions to be funded. The program will be competitive between and within states and requests for state funding will compete against requests for funding for cities and counties. Because of limited funding, not every state will receive an award, and the grants may not cover the entire costs of the conversion to NIBRS.

All awards will be made to the state which will transfer funds to the selected jurisdictions as appropriate. The proposal must present a separate budget for each jurisdiction or collaboration and describe procedures for transfer of funds. Applications requesting funds for more than one jurisdiction must include an approval signature from the appropriate official in each jurisdiction proposed for funding.

States interested in obtaining funding for NIBRS implementation under this solicitation, should contact either their state ASUCRP representative on their website-www.asucrp.org or the state agency designated by the Governor to apply for Federal NIBRS funds. Applications should include a cover memo from the ASUCRP member. If the applicant agency differs from the ASUCRP member's agency, the selection of the applicant agency should be explained. Applications should be submitted by July 31, 2000.

Total funds available for all recipients within a state cannot exceed $1 million and no more than three jurisdictions or collaborations can be proposed for funding. Since not all proposals submitted by a state may be approved for funding, the total requested in the application may exceed the $1 million limit on funds available for the state overall.

CITA requires that states receiving funds appropriated under that Act certify support for the FBI's National Instant Criminal Background Check System (NICS) and that a statewide strategy for information sharing is in effect or will be initiated. BJS also funds the National Criminal History Improvement Program (NCHIP) with CITA funds, and applicant states should check with BJS to determine whether the state has already certified to meeting these requirements. CITA also requires that fund recipients provide a 10% ''match'' of the total project cost (see below for additional information on match requirements).

Scope of Work

The object of this solicitation is to make awards to states to provide funding to jurisdictions for implementing the National Incident-Based Reporting System (NIBRS) in order to improve the quality of crime statistics in the country. Proposals should describe in appropriate detail the tasks and activities necessary for the implementation of NIBRS in the proposed jurisdictions. Resumes of the proposed consultants and firms to be involved with the project should be enclosed with the proposal. The application should include detailed timetable for each task to be funded under the project and for full implementation of NIBRS if this extends beyond the proposed funding period. The timetable can contain milestones beyond the one year grant period as long as they do not assume additional BJS funding. Since all proposed jurisdictions may not be selected for funding, the proposal should contain clearly separate descriptions of tasks and fund requests for each proposed jurisdiction.

Applications should also describe the status of NIBRS in the applicant state. If the state system is not NIBRS compliant, the proposal must explain how the proposed jurisdictions or collaborations will have NIBRS compliant record management systems.

The application should demonstrate familiarity with current activities relating to NIBRS implementation, including the ongoing SEARCH/BJS program demonstrating operational values of NIBRS (www.search.org/nibrs/default.asp), and the current efforts by the Police Executive Research Forum (PERF) (www.police forum.org), the Justice Research and Statistics Association (JRSA) (www.jrsa.org/ibrrc/index/html) and the National Institute of Justice (NIJ) (www.ojp.usdoj.gov/nij/pdf/compasscfp.pdf). Where applicable, the application should discuss the relationship between the proposed project activities and these other activities.

NIBRS awarded funds may be used to cover costs of: system enhancements or other modifications which will enable NIBRS compliant reporting; developing and providing training in NIBRS compliant reporting and analysis procedures (including salary and related costs for persons developing and providing the training); developing, implementing, or licensing of software which supports NIBRS compliant data collection, reporting, and analysis; and, attendance at conferences or other related activities that aid in the process of implementing NIBRS. Funds many not be used for equipment purchase or to cover salaries or overtime for persons attending NIBRS training sessions or meetings. Where a state is applying for funds to be transferred to a local jurisdiction(s), an amount equal to up to 5% of the amount to be transferred may be requested by the state to cover administrative costs.

The application should also include a description of activities, with accompanying fiscal implications, which will serve as the match for activities funded under the NIBRS award. BJS will consider all efforts which are designed to further the establishment of NIBRS compatible reporting to be allowable in support of the 10% match requirement.

Since this award program is authorized and funded under the Crime

Identification Technology Act of 1998, the program will be coordinated with other OJP efforts funded under CITA. Additionally, to encourage coordination and information sharing among criminal justice systems, all OJP awards supporting information technology development include a special condition which requires that a description of the project be submitted to the State Information Technology Point of Contact, if one has been designated. The name and address can be obtained at 1–800–421–6770 or at the OJP webpage (http://www.ojp.usdoj.gov). A copy of the correspondence should be either submitted with the application or submitted prior to fund drawdown. The intent of this condition is to facilitate communication within the State and there is no requirement that the point of contact concur with the information technology project.

Award Procedures

Applications will be reviewed competitively by a panel comprised of members selected by BJS. The panel will make recommendations to the Director, BJS. Final authority to enter into a cooperative agreement is reserved for the Director, BJS, or his designee.

Applicants will be evaluated on the basis of:

1. The jurisdictions commitment to implementing NIBRS
2. Knowledge of issues related to the Uniform Crime Reports (UCR) and the National Incident Based Reporting System (NIBRS), including familiarity with NIBRS related material contained in websites maintained by the FBI, BJS, JRSA, and NIJ.
3. The jurisdiction's current level of automation and plans for replacing the record management systems if necessary.
4. The likelihood that the jurisdiction will implement NIBRS in a timely manner.
5. Availability of qualified professional and support staff and suitable equipment for project activities.
6. Demonstrated fiscal, management and organizational capability.
7. Reasonableness of estimated costs for the total project and for individual cost categories

Application and Awards Process

An original and five (5) copies of a full proposal must be submitted with SF 424 (Rev. 1988), Application for Federal Assistance, as the cover sheet. Proposals must be accompanied by OJP Form 7150/1, Budget Detail Worksheet; OJP Form 4000/3 (Rev. 1–93), Assurances; OJP Form 4061/6, Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements; and OJP Form 7120–1 (Rev. 1–93), Accounting System and Financial Capability Questionnaire (to be submitted by applicants who have not previously received Federal funds from the Office of Justice Programs). If appropriate, applicants must complete and submit Standard Form LLL, Disclosure of Lobbying Activities. All applicants must sign Certified Assurances that they are in compliance with the Federal laws and regulations which prohibit discrimination in any program or activity the receives Federal funds. To obtain appropriate forms, contact Joyce Stanford, BJS Administrative Assistant, at (202) 616–3497.

The application should cover a 1-year period with information provided for completion of the entire project. Proposals must include a program narrative, detailed budget, and budget narrative. The program narrative shall describe activities as stated in the scope of work and address the evaluation criteria. The detailed budget must provide costs including salaries of staff involved in the project and portion of those salaries to be paid from the award; fringe benefits paid to each staff person; travel costs; supplies required to complete the project; and, other allowable costs. The source and amount of matching funds should also be included in the detailed budget. The budget narrative should closely follow the content of the detailed budget. The narrative should also relate the items budgeted to the project activities and should provide a justification and explanation for the budgeted items. Refer to the aforementioned timetable when developing the program narrative and budget information.

Dated: June 14, 2000.

Jan M. Chaiken,

Director, Bureau of Justice Statistics.

[FR Doc. 00–15387 Filed 6–16–00; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

June 13, 2000.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L.104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation for BLS, ETA, PWBA, and OASAM contact Karin Kurz ((202) 219–5096 ext. 159 or by E-mail to Kurz-Karin@dol.gov). To obtain documentation for ESA, MSHA, OSHA, and VETS contact Darrin King ((202) 219–5096 ext. 151 or by E-Mail to King Darrin@dol.gov).

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), on or before July 19, 2000.

The OMB is particularly interested in comments which:

- 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;
- 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;
- Enhance the quality, utility, and clarity of the information to be collected; and
- 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.

Agency: Mine Safety and Health Administration (MSHA).

Title: Identification of Independent Contractors.

Type of Review: Extension.

OMB Number: 1219–0043.

Frequency: On occasion.

Affected Public: Business or other for-profit.

Number of Respondents: 1,687.

Number of Annual Responses: 1,687.

Estimated Time Per Response: Varies from 4 minutes as a result of a citation to 8 minutes for a contractor to file a request.

Total Burden Hours: 191 hours.

Total Annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $368.

Description: Provides that independent contractors may

voluntarily obtain a permanent MSHA identification number by submitting to MSHA their trade name and business address, a telephone number, an estimate of the annual hours worked by the contractor on mine property for the previous calendar year, and the address of record for the service of documents upon the contractor.

Agency: Employment Standards Administration (ESA).

Title: Employment Under Special Certificates for Apprentices, Messengers, and Learners.

Type of Review: Extension.

OMB Number: 1215–0192.

Frequency: Annually.

Affected Public: Business or other for-profit; individuals or households; not-for-profit institutions; State, Local, or Tribal Government.

Form No.	Number of respondents	Number of annual responses	Estimated time per response
WH–209	1	0	20
WH–205	650	650	30

Total Burden Hours: 325 hours (rounded).

Total Annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $234.

Description: Employers are required by the Department of Labor to submit an application for authorization to employ messengers and learners at subminimum wages under the provisions of section 14(a) of the Fair Labor Standards Act. Applications and records required to be kept are reviewed by the Department of Labor to determine whether statutory and regulatory requirements for the employment of messengers, apprentices and learners have been met.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 00–15374 Filed 6–1–00; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 00–071]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Availability of Inventions for Licensing.

SUMMARY: The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: June 19, 2000.

FOR FURTHER INFORMATION CONTACT: Guy M. Miller, Patent Counsel, Goddard Space Flight Center, Mail Code 750.2, Greenbelt, MD 20771; 301–286–7351.

NASA Case No. GSC 13,707–1: Dual Antenna Compensating Combiner (DACC);

NASA Case No. GSC 13,874–1: Adhesive Bubble Removal Technique and Fixture for Fiber Optic Applications;

NASA Case No. GSC 14,098–1: Microaltimeter;

NASA Case No. GSC 13,966–1: GPS ''Compound Eye'' Attitude Sensor;

NASA Case No. GSC 14,106–1: Automated Liquid Helium Transport System;

NASA Case No. GSC 14,147–1: Process for Producing High Quality Optically Polished Surfaces On Bare Aluminum Substrates;

NASA Case No. GSC 14,172–1: Hub Mounted Bending Beam for Shape Adjustment of Springback Reflectors;

NASA Case No. GSC 14,205–1: Continuously Variable Planetary Transmission(CVPT);

NASA Case No. GSC 14,207–1: Gear Bearings;

NASA Case No. GSC 14,213–1: Estimated Spectrum Adaptive Postfilter (ESAP) and the Iterative Prepost Filtering (IPF) Algorithms;

NASA Case No. GSC 14,236–1: MEMS Devices for Spacecraft Thermal Control Applications;

NASA Case No. GSC 14,243–1: Autonomous Unified On-Board Orbit and Attitude Control System for Satellites;

NASA Case No. GSC 14,339–1: 3-D Interactive Display;

NASA Case No. GSC 14,370–1: Circular Polarization Keying.

Dated: June 12, 2000.

Edward A. Frankle,

General Counsel.

[FR Doc. 00–15328 Filed 6–16–00; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 00–069]

NASA Advisory Council (NAC), Space Science Advisory Committee (SScAC), Solar System Exploration Subcommittee

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Space Science Advisory Committee, Solar System Exploration Subcommittee.

DATES: Wednesday, June 28, 2000, 8:30 a.m. to 5 p.m.; and Thursday, June 29, 2000, 8:30 a.m. to 5 p.m.

ADDRESSES: National Aeronautics and Space Administration, Conference Room 3H 46, 300 E Street, SW Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Carl Pilcher, Code S, National Aeronautics and Space Administration, Washington, DC 20546; (202) 358–2150.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting is as follows:

Planetary Program Update

Research and Analysis Restructuring

Mars 2003 Mission Options

Outer Solar System Science Strategy

Response to Committee on Planetary Exploration Review of Solar System Roadmap

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: June 8, 2000.

Matthew M. Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 00–15326 Filed 6–16–00; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 00–070]

Notice of Prospective patent license

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that Diebold, Inc., of North Canton, Ohio, has applied for an exclusive license to practice the invention described and claimed in: U.S. Patent No. 5,539,454, entitled ''Video Event Trigger and Tracking System Using Fuzzy Logic Comparators,'' which has been assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to the NASA Glenn Research Center.

DATES: Responses to this notice must be received by August 18, 2000.

FOR FURTHER INFORMATION CONTACT: Kent N. Stone, Patent Attorney, John H. Glenn Research Center, Mail Code 500–118, 2100 Brookpark Road, Cleveland, Ohio 44135–3191; telephone (216) 433–8855.

Dated: June 8, 2000.

Edward A. Frankle,

General Counsel.

[FR Doc. 00–15327 Filed 6–16–00; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Submission for OMB Review; Comment Request

June 5, 2000.

The National Endowment for the Arts (NEA) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 [Pub. L. 104–13, 44 U.S.C. Chapter 35]. Copies of this ICR, with applicable supporting documentation, may be obtained by calling the National Endowment for the Arts' Deputy for Guidelines, Panel, & Council Operations, A.B. Spellman 202/682–5421. Individuals who use a telecommunications device for the deaf (TTY/TDD) may call 202/682–5496 between 10:00 a.m. and 4:00 p.m. Eastern time, Monday through Friday.

Comments should be sent to the Office of Information and Regulatory Affairs. Attn: OMB Desk Officer for the National Endowment for the Arts, Office of Management and Budget, Room 10235, Washington, DC 20503 202/395–7316, within 30 days from the date of this publication in the **Federal Register.**

The Office of Management and Budget is particularly interested in comments which:

- 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.
- 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.
- Enhance the quality, utility, and clarity of the information to be collected; and
- 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 submissions of responses.

SUPPLEMENTARY INFORMATION: *Agency:* National Endowment for the Arts.

Title: Panelist Profile Form.

Frequency: Every three years.

Affected Public: Individuals.

Estimated Number of Respondents: 271.

Total Burden Hours: 54.

Total Annualized Capital/Start Up Costs: 0

Total Annual Costs (Operating/Maintaining systems or Purchasing Services): 0.

The National Endowment for the Arts, an investment in America's living cultural heritage, serves the public good by nurturing the expression of human creativity, supporting the cultivation of community spirit, and fostering the recognition and appreciation of the excellent and diversity of our nation's artistic accomplishments.

With the advice of the National Council on the Arts and the advisory panels, the Chairman establishes eligibility requirements and criteria for the review of applications for funding. Section 959(c) of the Endowment's enabling legislation, as amended, directs the Chairman to utilize advisory panels to review applications and to make recommendations to the National Council on the Arts, which in turn makes recommendations to the Chairman.,

The legislation requires the Chairman''(1) to ensure that all panels are composed, to the extent practible, of individuals reflecting a wide geographic, ethnic, and minority representation as well as to (2) ensure that all panels include representation of lay individuals who are knowledgeable about the arts * * *'' In addition, the membership of each panel must change substantially from year to year and each individual is ineligible to serve on a panel for more than 3 consecutive years. To assist with efforts to meet these legislated mandates.

Automated Panel Bank System (APBS), a computer database of names, addresses, areas of expertise and other basic information on individuals who are qualified to serve as panelists for the Arts Endowment.

The Panelist Profile Form, for which clearance is requested is used to gather basic information from qualified individuals recommended by the arts community, arts organizations, Congress, the general public, local and state and regional arts organizations, self, Endowment staff, and others.

Murray Welsh,

Director, Administrative Services National Endowment for the Arts.

[FR Doc. 00–15368 Filed 6–16–00; 8:45 am]

BILLING CODE 7536–01–M

OFFICE OF MANAGEMENT AND BUDGET

Information Collection Activities Under OMB Review

AGENCY: Office of Management and Budget.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) invites the general public and Federal agencies to comment on the renewal without change of standard form LLL, Disclosure of Lobbying Activities. This form is required by 31 U.S.C. 1352.

DATES: Comments must be submitted on or before August 18, 2000. Late comments will be considered to the extent practicable.

ADDRESSES: Comments should be addressed to: F. James Charney, Policy Analyst, Office of Management and Budget, Room 6025, New Executive Office Building, Washington, DC 20503. Comments may be submitted via E-mail (grants@omb.eop.gov), but must be made in the text of the message and not as an attachment.

FOR FURTHER INFORMATION CONTACT: F. James Charney, Office of Federal Financial Management, Office of Management and Budget, (202) 395–3993. The standard form LLL can be downloaded from OMB's home page (http://www.whitehouse.gov/omb), under the heading ''Grants Management.''

SUPPLEMENTARY INFORMATION:

OMB Control No.: 0348–0046.

Title: Disclosure of Lobbying Activities.

Form No: SF–LLL.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Respondents: States, Local Governments, Non-Profit organizations.

Number of Responses: 300.

Estimated Time Per Response: 10 minutes.

Needs and Uses: The SF–LLL is the standard disclosure reporting form for lobbying paid for with non-Federal funds, as required by the Byrd Amendment, as amended by the Lobbying Disclosure Act of 1995.

Joshua Gotbaum,

Executive Associate Director and Controller.

BILLING CODE 3110–01–P

PAPERWORK REDUCTION ACT SUBMISSION

Please read the instructions before completing this form. For additional forms or assistance in completing this form, contact your agency's Paperwork Clearance Officer. Send two copies of this form, the collection instrument to be reviewed, the Supporting Statement, and any additional documentation to: **Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.**

1. Agency/Subagency originating request
Executive Office of the President
Office of Management and Budget (OMB/OFFM)

2. OMB control number b. ☐ None
a. 0348-0046

3. Type of information collection *(check one)*
a. ☐ New Collection
b. ☐ Revision of a currently approved collection
c. ☐ Extension of a currently approved collection
d. ☒ Reinstatement, **without change**, of a previously approved collection for which approval has expired
e. ☐ Reinstatement, **with change**, of a previously approved collection for which approval has expired
f. ☐ Existing collection in use without an OMB control number
For b-f, note Item A2 of Supporting Statement instructions

4. Type of review requested *(check one)*
a. ☒ Regular
b. ☐ Emergency - Approval requested by: ___/___/___
c. ☐ Delegated

5. Small entities
Will this information collection have a significant economic impact on a substantial number of small entities?
☐ Yes ☒ No

6. Requested expiration date
a. ☒ Three years from the approval date b. ☐ Other: ___/___

7. Title
SF-LLL, Disclosure of Lobbying Activities

8. Agency form number(s) *(if applicable)*
SF-LLL

9. Keywords
Lobbying, Grants, Contrats, Loans

10. Abstract
The SF-LLL is the standard disclosure reporting form for lobbying paid for with non-Federal funds, as required by the Byrd Amendment, as amended by the Lobbying Disclosure Act of 1995.

11. Affected public *(Mark primary with "P" and all others with "X")*
a. X Individuals or households
b. X Business or other for-profit
c. P Not-for-profit institutions
d. __ Farms
e. __ Federal Government
f. X State, Local, or Tribal Government

12. Obligation to respond *(Mark primary with "P" and all others that apply with "X")*
a. ☐ Voluntary
b. ☐ Required to obtain or retain benefits
c. ☒ Mandatory

13. Annual reporting and recordkeeping hour burden
a. Number of respondents 300
b. Total annual responses 300
1. Percentage of these responses collected electronically ___%
c. Total annual hours requested 50
d. Current OMB inventory 50
e. Difference
f. Explanation of difference
1. Program change
2. Adjustment

14. Annual reporting and recordkeeping cost burden *(in thousands of dollars)*
a. Total annualized capital/startup costs
b. Total annual costs (O&M)
c. Total annualized cost requested
d. Current OMB inventory
e. Difference
f. Explanation of difference
1. Program change
2. Adjustment

15. Purpose of information collection *(Mark primary with "P" and all others that apply with "X")*
a. __ Application for benefits
b. __ Program evaluation
c. __ General purpose statistics
d. __ Audit
e. __ Program planning or management
f. __ Research
g. P Regulatory or compliance

16. Frequency of recordkeeping or reporting *(check all that apply)*
a. ☐ Recordkeeping b. ☐ Third party disclosure
c. ☒ Reporting:
1. ☒ On occasion 2. ☐ Weekly 3. ☐ Monthly
4. ☐ Quarterly 5. ☐ Semi-annually 6. ☐ Annually
7. ☐ Biennially 8. ☐ Other (describe)

17. Statistical methods
Does this information collection employ statistical methods?
☐ Yes ☒ No

18. Agency contact *(person who can best answer questions regarding the content of this submission)*
Name: F. James Charney
Phone: (202) 395-7582

OMB 83-I 10/95

19. Certification for Paperwork Reduction Act Submissions

On behalf of this Federal agency, I certify that the collection of information encompassed by this request complies with 5 CFR 1320.9.

NOTE: The text of 5 CFR 1320.9, and the related provisions of 5 CFR 1320.8(b)(3), appear at the end of the instructions. *The certification is to be made with reference to those regulatory provisions as set forth in the instructions.*

The following is a summary of the topics, regarding the proposed collection of information, that the certification covers:

(a) It is necessary for the proper performance of agency functions;

(b) If avoids unnecessary duplication;

(c) It reduces burden on small entities;

(d) It uses plain, coherent, and unambiguous language that is understandable to respondents;

(e) Its implementation will be consistent and compatible with current reporting and recordkeeping practices;

(f) It indicates the retention periods for recordkeeping requirements;

(g) It informs respondents of the information called for under 5 CFR 1320.8 (b)(3) about:

(i) Why the information is being collected;

(ii) Use of information;

(iii) Burden estimate;

(iv) Nature of response (voluntary, required for a benefit, or mandatory);

(v) Nature and extent of confidentiality; and

(vi) Need to display currently valid OMB control number;

(h) It was developed by an office that has planned and allocated resources for the efficient and effective management and use of the information to be collected (see note in Item 19 of the instructions);

(i) It uses effective and efficient statistical survey methodology (if applicable); and

(j) It makes appropriate use of information technology.

If you are unable to certify compliance with any of these provisions, identify the item below and explain the reason in Item 18 of the Supporting Statement.

Signature of Senior Official or designee	Date
Robert L. Nabors, II (Executy Secretary and Assistant Director for Administration)	

OMB 83-I 10/95

SF-LLL: Disclosure of Lobbying Activities — Reinstatement, Without Change

Supporting Statement to Accompany SF-83I

A. Justification

1. Section 319 of the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1990, PL 101-121 (31 USC 1352) required that each person who request or receives a Federal contract, grant, cooperative agreements, loan or a Federal commitment to unsure or guarantee a loan, must disclose lobbying. The Lobbying Disclosure Act of 1995 (PL 104-65) included some amendments to 31 USC 13542, popularly known as the Bryd Amendment. These amendments were effective 1/1/96.

2. The SF-LLL is the standard disclosure reporting form for lobbying paid for with non-Federal funds, as required by the Byrd Amendment, as amended by the Lobbying Disclosure Act of 1995. The form is used by persons who request or receive a Federal contract, grant, cooperative agreements, loan or a Federal commitment to unsure or guarantee a loan.

3. Federal awarding agencies have the option of allowing grantees to use electronic submission of alternate forms.

4. There is no other source for the information reported on this form.

5. The information requirements do not pertain to small business or other small entities.

6. The collection of information is required to meet a statutory requirement; thus, the collection cannot be less frequently.

7. No such special circumstances exist.

8. The information requirement has been in effect since 1989.

9. No such payments or gifts are contemplated.

10. No confidentiality is provided.

11. No sensitive information is collected.

12. The estimated reporting burden per respondent for this form is 10 minutes.

13-18. Not Applicable.

B. Collections of Information Employing Statistical Methods - Not Applicable

[FR Doc. 00–15325 Filed 6–16–00; 8:45 am]
BILLING CODE 3110–01–C

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

E-Pawn.com, Inc.; Order of Suspension of Trading

June 14, 2000.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of E-Pawn.com, Inc. (''E-Pawn'') because of questions regarding the accuracy of assertions by E-Pawn, and by others, in documents sent to and statements made to market makers of the stock of E-Pawn, other broker-dealers, and to investors concerning, among other things, the identity of the persons in control of the operations and management of the company. In addition, recent market activity in E–Pawn securities may be the result of manipulative conduct or other illegal activity.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above listed company.

Therefore, it is ordered, pursuant to section 12(k) of the Securities Act of 1934, that trading in the above listed company is suspended for the period from 9:30 a.m. EDT, June 14, 2000 through 11:59 p.m. EDT, on June 27, 2000.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–15444 Filed 6–14–00; 5:08 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

WAMEX Holdings, Inc.; Order of Suspension of Trading

June 14, 2000.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of WAMEX Holdings, Inc. (''WAMEX'') because of questions regarding the accuracy of assertions by WAMEX, and by others, in documents sent to and statements made to market makers of the stock of WAMEX, other broker-dealers, and to investors concerning: (1) WAMEX's ability to comply with the Commission's regulations regarding the operation of an Alternative Trading System; and (2) funds purportedly raised by WAMEX from private investors. In addition, recent market activity in WAMEX securities may be the result of manipulative conduct or other illegal activity.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above listed company.

Therefore, it is ordered, pursuant to section 12(k) of the Securities Act of 1934, that trading in the above listed company is suspended for the period from 9:30 a.m. EDT, June 14, 2000 through 11:59 p.m. EDT, on June 27, 2000.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–15443 Filed 6–14–00; 4:59 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42914]

Order Directing the Exchanges and the National Association of Securities Dealers, Inc. to Submit a Phase-in Plan to Implement Decimal Pricing in Equity Securities and Options; Pursuant to Section 11A(a)(3)(B) of the Securities Exchange Act of 1934

June 8, 2000.

Notice is hereby given that, pursuant to Section 11A(a)(3)(B) of the Securities Exchange Act of 1934 (''Exchange Act'')[1] the Securities and Exchange Commission (''Commission'') orders the American Stock Exchange LLC (''AMEX''), the Boston Stock Exchange, Inc. (''BSE''), the Chicago Board Options Exchange, Inc. (''CBOE''), the Chicago Stock Exchange, Inc. (''CHX''), the Cincinnati Stock Exchange, Inc. (''CSE''), the International Securities Exchange, LLC (''ISE''), the National Association of Securities Dealers, Inc. (''NASD''), the New York Stock Exchange, Inc. (''NYSE''), the Pacific Exchange, Inc. (''PCX'') and the Philadelphia Stock Exchange, Inc. (''PHLX'') (collectively the ''Participants'' and individually a ''Participant'') to act jointly in planning, discussing, developing, and submitting to the Commission a plan that will begin phasing in the implementation of decimal pricing in equity securities and options on or before September 5, 2000.[2] The Participants should discuss the development and implementation of the phase-in plan with interested market participants, including, but not limited to, the Securities Industry Association (''SIA'') and its members, the National Securities Clearing Corporation, the Depository Trust and Clearing Corporation (''DTCC''), the Options Clearing Corporation (''OCC''), the Securities Industry Automation Corporation, the Intermarket Trading System Operating Committee, the Options Price Reporting Authority, the Consolidated Tape Association, and the Consolidated Quote Operating Committee (collectively the ''Interested Parties''). The Commission further directs the Participants to submit the phase-in plan to the Commission no later than 45 days after the issuance of this Order. Finally, the Commission directs each Participant to submit the rule changes necessary to implement the phase-in plan no later than 60 days after the issuance of this Order.[3]

1. Background

On January 28, 2000, the Commission issued an Order[4] requiring the Participants to facilitate an orderly transition to decimal pricing in the United States securities markets. The Order prescribed a timetable for the Participants to begin trading some equity securities, and options on those equity securities, in decimals by July 3, 2000, and all equities and options by January 3, 2001.

On March 6, 2000, the NASD announced that the Nasdaq Stock Market, Inc. (''Nasdaq'') would not have sufficient capacity to meet the target dates for implementation.[5] The NASD also expressed concern regarding overall industry readiness and requested that the Commission work with the industry and the markets to determine an appropriate time frame that would not impose unnecessary risks on investors.[6]

[1] Section 11A(a)(3)(B) authorizes the Commission, in furtherance of its statutory directive to facilitate the establishment of a national market system, by rule or order, ''to authorize or require self-regulatory organizations to act jointly with respect to matters as to which they share authority under [the Act] in planning, developing, operating, or regulating a national market system (or a subsystem thereof) or one or more facilities thereof.'' 15 U.S.C. 78k–1(a)(3)(B).

[2] The Commission selected September 5, 2000 as the latest start-up date for the phase-in period because it is the first trade date following the September 4, 2000 Labor Day holiday.

[3] Additional requirements are discussed in the text accompanying *infra* notes 28 through 41.

[4] *See* Securities Exchange Act Release No. 42360 (Jan. 28, 2000), 65 FR 5004 (Feb. 2, 2000).

[5] *See* Letters from Frank G. Zarb, Chairman and Chief Executive Officer, NASD, to Arthur Levitt, Chairman, Commission, dated March 6, 2000 and March 21, 2000.

[6] Nasdaq has committed to intensify its efforts (including, at the Commission's request, hiring an independent consultant to advise on capacity issues) to help ensure that it manages its growth responsibly. The NASD has assured the Commission that Nasdaq will dedicate all required

Subsequently, on April 13, 2000, the Commission issued an Order staying the original deadlines for decimalization.[7] In the April 13 Order, the Commission also requested comment on two alternatives for implementing decimal pricing in exchange-listed equity securities this year. The first alternative would begin decimal pricing in all exchange-listed securities on or before September 4, 2000 (''Dual Pricing''). Congressman Thomas Bliley, Michael Oxley, and Edward Markey had strongly urged the implementation of decimal pricing on or before September 4, 2000 because of the benefits to investors.[8] The second alternative envisioned a temporary or ''pilot'' program to begin decimal pricing in certain exchange-listed securities and options on or before September 4, 2000 (''Decimals Pilot''). Under both alternatives, all stocks would be traded in decimals by March 31, 2001.[9]

II. Summary of Comments

The Commission received 36 comment letters on the decimal implementation alternatives presented in the April 13 Order.[10] Nine individuals urged the Commission to support full decimalization for both exchanged-listed and Nasdaq securities either immediately or no later than the July 3, 2000 start-up date proposed in the Commission's original Order.[11] Two vendors favored the Dual Pricing alternative proposed in the April 13 Order, in which all exchange-listed stocks would be priced in decimals on or before September 4, 2000.[12] Nine commenters, consisting of broker-dealers, exchanges, and service bureaus, however, argued in favor of postponing any decimalization until a date closer to when Nasdaq is prepared to price its securities in decimals on March 31, 2001.[13] The remaining 16 commenters, consisting of broker-dealers, exchanges, clearing organizations, the NASD, and the SIA, supported some form of phased-in dual pricing on or before September 4, 2000.[14]

A. Immediate Decimalization

Nine individual investors argued in favor of the Commission mandating all markets to begin decimal pricing in all securities either immediately or at least by the original July 3, 2000 start-up date. These commenters did not address how the markets and the securities industry could accomplish the conversion to decimalization in an orderly manner.

B. Full Dual Pricing Starting On or Before September 4, 2000

Two vendors stated that they would be ready for the Dual Pricing alterntaive proposed by the April 13 Order.[15] One of the commenters stated that, from a market data vendor's point of view, it would strongly prefer trading to

resources and the attention of senior management to the conversion to decimal pricing. The Commission is monitoring Nasdaq's efforts closely.

[7] *See* Securities Exchange Act Release No. 42685 (April 13, 2000), 65 FR 21046 (April 19, 2000) (''April 13 Order''); *see also* Securities Exchange Act Release No. 42516 (March 10, 2000), 65 FR 14637 (March 17, 2000).

[8] *See* Letter from Chairman Thomas Bliley, Committee on Commerce, U.S. House of Representatives; Chairman Michael G. Oxley, Subcommittee on finance and Hazardous Materials, U.S. House of Representatives; and Congressman Edward J. Markey Ranking Member, Subcommittee on Telecommunications, Trade, and Consumer Protection, U.S. House of Representatives to Arthur Levitt, Chairman, Commission, dated April 4, 2000 (''Commerce Committee Letter'').

[9] Nasdaq has assured the Commission that it will be able to support decimal trading of exchange-listed securities by Labor Day of this year (*i.e.*, for the third market), and of Nasdaq stocks by March 31, 2001. *See* Letter from Richard G. Ketchum, President, NASD, to Annette Nazareth, Director, Division of Market Regulation (''Division'') and Robert L. D. Colby, Deputy Director, Division, dated April 12, 2000.

[10] Copies of the comment letters are available in the Public Reference Room in file No. 4–430.

[11] *See* e-mail from Nathaniel J. Olsson, dated April 23, 2000; e-mail from Don Welsh, dated April 23, 2000; e-mail from Michael Esch, dated April 22, 2000; e-mail from H. Rogers, dated April 23, 2000; e-mail from D. Zilant, dated April 23, 2000; e-mail from Steve Sutherland, dated May 3, 2000; e-mail from Patrick Murray, dated May 4, 2000; e-mail from Douglas Hawkins, dated May 23, 2000; and e-mail from Peter Pfieffer, dated May 12, 2000 (who identifies himself as a programmer analyst and sees no technical bars to implementing decimal pricing by July 3, 2000).

[12] *See* letter from Don Finucane, Vice President, Marketing and Product Development, Standard & Poor's Comstock, dated May 10, 2000 (''S&P Comstock Letter''); and e-mail from ILX Systems, dated May 3, 2000 (''ILX E-Mail'').

[13] Several commenters argued that decimalization should wait until all major securities markets, including Nasdaq, are ready to begin simultaneous. *See* letter from Fred Reif, Senior Vice President, A.G. Edwards & Sons, Inc., dated May 9, 2000 (''A.G. Edwards Letter''); letter from Paul B. O'Kelly, Executive Vice President, Market Regulation and Legal, CHX, dated May 9, 2000 (''CHX Letter''); letter from Bob Munro, Senior Director, ADP/SIS, dated May 15, 2000 (''ADP/SIS Letter''); letter from Norman Eaker, Principal, Edward Jones, dated May 9, 2000 (''Edward Jones Letter''); e-mail from Robert B. Sloan, Partner, Director of Information Services, J.C. Bradford, dated April 13, 2000 (''Bradford E-Mail''); letter from W. Leo McBlain, Chairman, and Thomas J. Jordan, Executive Director, Financial Information Forum, dated May 15, 2000 (''FIF Letter''); letter from Michael J. Ryan, Jr., Chief of Staff, AMEX, dated May 25, 2000 (''AMEX Letter''); and e-mail from Jeffrey C. Wells, Senior Vice President, Bridge Information Systems, dated May 10, 2000 (''Bridge E-Mail''). One commenter indicated that, in view of the complexities involved and the need for adequate planning and testing, the beginning of any decimalization should be delayed until mid to late October, 2000. *See* e-mail from Joyce L. Ulrich, First Vice President, Brokerage Applications, Legg Mason, dated May 9, 2000 (''Legg Mason E-Mail''). One commenter suggested that the date for full decimalization implementation be moved from March 31, 2001 to April 30, 2001. *See* letter from Tracey E. Curvey, Executive Vice President, Online Brokerage Group, Fidelity Investments, dated May 25, 2000 (''Fidelity Letter''). In addition, one commenter suggested that decimalization in exchange-listed securities should be initiated no sooner than early January 2001 in order to shorten the period of dual pricing until decimal pricing in Nasdaq securities can begin on March 31, 2001. *See* letter from Michael J. Simon, Senior Vice President and General Counsel, ISE, dated May 10, 2000 (''ISE Letter'').

[14] Several commenters favored the Decimals Pilot starting on or before September 4, 2000. *See* letter from Charles J. Henry, President and Chief Operating Officer, CBOE, dated May 2, 2000 (''CBOE Letter''); letter from Scott G. Abbey, Chief Information Officer and Executive Vice President, Paine Webber, Inc., dated May 8, 2000 (''BSE Letter''); letter from Marc E. Lackritz, President, SIA, dated May 10, 2000 (''SIA Letter''); letter from Robert C. King, Chairman, and Lee Korins, President and Chief Executive Officer, Securities Traders Association, dated May 12, 2000 (''STA Letter''); letter from Wayne P. Luthringshausen, Chairman, OCC, dated may 17, 2000 (''OCC Letter''); and letter from Philip D. DeFeo, Chairman and Chief Executive Officer, PCX, dated May 17, 2000 (''PCX Letter''). DTCC indicated that it would be ready for the Decimals Pilot on or before September 4, 2000, but indicated that it may be prudent to wait until September 25, 2000, after the options expiration cycle has concluded. *See* letter from Dennis J. Dirks, Chief Operating Officer, DTCC, dated May 12, 2000 (''DTCC Letter''). The PHLX indicated that the Decimals Pilot starting on or before September 4, 2000 was feasible and clearly preferable to the Dual Pricing alternative, but acknowledged that decimal trading ideally should begin at the end of February 2001. *See* letter from Meyer S. Frucher, Chairman and Chief Executive Officer, PHLX, dated May 10, 2000 (''PHLX Letter''). The NYSE preferred a modified phase-in schedule that would rapidly expand the number of exchange-listed securities subject to decimal pricing (this proposal is described fully below). *See* letter from James E. Buck, Senior Vice President and Secretary, NYSE, dated May 16, 2000 (''NYSE Letter''). A major clearing firm also favored a flexible Decimals Pilot that would allow for the addition of more securities if conditions permit. *See* letter from C. Michael Viviano, Chairman, BNY Clearing Services, LLC, dated April 27, 2000 (''BNY Letter''). The NASD indicated that it could be ready for either Dual Pricing or the Decimals Pilot starting on or before September 4, 2000. *See* letter from Joan C. Conley, Senior Vice President and Corporate Secretary, NASD, dated May 10, 2000 (''NASD Letter''). One commenter indicated that, while Dual Pricing on or before September 4, 2000 was feasible, minimum pricing increments of a nickel (presumably for at least a phase-in period) would be best in order to permit the industry to experience potential volume increases at a slower pace. Moreover, this commenter acknowledged that dual pricing could result in confusion for its ''traders, clearing clients, and prime brokers.'' *See* e-mail from George Tumas, Managing Director, Banc of America Securities, dated May 10, 2000 (''Banc of America E-Mail''). Similarly, another commenter indicated that, while it would be ready for Dual Pricing on or before September 4, it would recommend that decimal pricing begin with a large number of exchange-listed securities in nickel minimum pricing increments. After a thorough evaluation of its impact on system and line capacity, decimal pricing in penny increments could begin at a later stage. *See* e-mail from Sara Banerjee, Vice President, Data Operations and Procurement, and Doug O'Hearen, Vice President, Development, Telekurs Financial, dated May 10, 2000 (''Telekurs E-Mail'').

[15] *See* S&P Comstock Letter and ILX E-Mail *supra* note 12.

commence in all exchange-listed securities in decimals on or before September 4, 2000 (compared to the Decimals Pilot).[16]

C. Postponement Until Dates Closer to March 31, 2001

Nine commenters, including broker-dealers, exchanges, and service bureaus, argued that the Commission should implement a relatively brief phase-in period for both exchange-listed and Nasdaq securities—but that the beginning date for this process should be postponed until a date closer to when Nasdaq is prepared to begin pricing its securities in decimals on March 31, 200.[17] These commenters were concerned about the potential systems difficulties and investor confusion that could arise from an extended period in which exchange-listed securities were priced in decimals while Nasdaq securities were still priced in fractions. The commenters stressed the benefits of postponing decimalization until the conversion could begin in both exchange-listed and Nasdaq securities at the same time. Nevertheless, while these commenters believed that a later start-up date would be advisable or preferable, most recognized that a phase-in schedule starting on or before September 4, 2000 would be technically feasible.

D. Phase-In Starting On or Before September 4, 2000

As discussed above, the remaining commenters agreed that some form of phase-in for decimal pricing for exchange-listed securities could begin on or before September 4, 2000. Some of these commenters preferred an extended pilot of only a small number of securities (along the lines of the Decimals Pilot alternative proposed for comment in the April 13 Order).[18] For example, the SIA believed that a pilot was more feasible than Dual Pricing because a pilot would, among other things, minimize the difficulties faced by the securities industry to create and maintain separate processes, systems, programs, and procedures for both decimals and fractions and would simplify the educational effort directed at the investing public to assist them in understanding how specific securities would be priced.[19] Other commenters, however, supported a more aggressive phase-in of decimal pricing in all exchange-listed securities. The NYSE, for example, favored commencing decimal pricing in a limited number of NYSE-listed securities, advancing to a full pilot of perhaps 50 NYSE-listed securities during an initial phase-in period of one month or less. The NYSE indicated that an expansion to all of its listed securities could prudently occur after approximately 60 days of trading in all pilot stocks.[20] All of these commenters stressed the need for careful planning and systems testing to avoid potential market disruptions and to minimize investor confusion.

E. Minimum Price Increments

The majority of commenters who favored a phase-in process for exchange-listed stocks also believed that at least some exchange-listed securities should be quoted in minimum price increments of a penny. For example, the NYSE favored pricing in pennies in at least some stocks from the beginning of any pilot.[21]

F. Options Pricing

Several of the commenters who favored beginning the decimalization phase-in of exchanged-listed securities on or before September 4, 2000, nevertheless recognized that this could present significant problems for the options markets. For example, the three options exchanges that supported some form of phase-in starting on or before September 4, 2000 cited that potential strains on options price reporting systems that could result from widespread decimal pricing in both exchange-listed securities and their related options.[22] These concerns were also reflected in the comment letters from the SIA and the OCC.[23] These commenters indicated that plans for the decimalization phase-in should take these concerns into account when setting minimum price increments for both stocks and options, and that it could be necessary to a least temporarily permit some options to trade at wide price increments than those permitted in the related stocks. For example, the SIA and the OCC recommended that options price increments be maintained in a similar manner to what is in existence today, *i.e.,* options with premiums quoted under $3 per contract would be quoted in nickle increments and options with higher priced premiums would be quoted in dime increments.[24]

III. Discussion

Section 11A(a)(2) of the Exchange Act [25] directs the Commission, having due regard for the public interest, the protection of investors, and the maintenance of fair and orderly markets, to use its authority under the Exchange Act to facilitate the establishment of a national market system for securities. Section 11A(a)(3)(B) of the Exchange Act gives the Commission the ability to authorize or require by order the self-regulatory organizations ''to act jointly * * * in planning. developing, operating, or regulating a national market system.'' [26] This authority enables the Commission to require joint activity that otherwise might be asserted to have an impact on competition, where the activity serves the public interest and the interests of investors.[27]

After careful consideration of the comments received in response to the April 13 Order and further analysis, the Commission believes that decimal pricing in exchange-listed securities and options should be phased in beginning or before September 5, 2000. Because the NASD has indicated that it would be possible to initiate a controlled decimalization phase-in of a limited number of Nasdaq securities on March 12, 2001, the Commission believes that the NASD should implement a phase-in plan on that date and extend decimalization to all Nasdaq securities no later than April 9, 2001. Accordingly, the Commission intends that full implementation of decimal pricing in all exchange-traded and Nasdaq equity securities and options (''Full Implementation'') should be completed no later than April 9, 2001.[28] In view of the variety of concerns over immediate, full-scale decimalization in exchange-

[16] *See* S&P Comstock Letter *supra* note 12.

[17] *See supra* note 13.

[18] *See supra* note 14.

[19] *See* SIA Letter *supra* note 14.

[20] *See* NYSE Letter *supra* note 14.

[21] *See id.*

[22] The CBOE and PCX favored a phase-in in the form of an extended pilot of decimal pricing in a small number of stocks. *See* CBOE Letter and PCX Letter *supra* note 14. While the PHLX also supported a pilot, it indicated that widespread decimal pricing in listed stocks would be feasible ''with a controlled, phase-in initial period.'' *See* PHLX Letter *supra* note 14.

[23] *See* SIA Letter and OCC Letter *supra* note 14.

[24] *See* SIA Letter and OCC Letter *supra* note 14.

[25] 15 U.S.C. 78k-1(a)(2).

[26] 15 U.S.C. 78k-1a(a)(B).

[27] *See, e.g.,* Securities Exchange Act Release No. 41843 (Sept. 7, 1999), 64 FR 50126 (Sept. 15, 1999); and Securities Exchange Act Release No. 42849 (May 26, 2000), 65 FR 36180 (June 7, 2000) (directing options exchanges to develop strategies to mitigate quote message traffic). The Participants previously requested that, to address concerns about antitrust liability, the Commission order them to work together to coordinate decimal planning.

[28] The Commission selected April 9, 2001 as the deadline of Full Implementation to avoid disruptions of securities pricing systems at broker-dealers, mutual funds, and other market participants during the critical period immediately following the quarter-end on March 31, 20001. These pricing systems are essential for accurate quarter-end pricing for millions of mutual fund investors, as well as for large numbers of institutional investors and other market participants who use over-the-counter equity derivatives that employ quarter-end expiration cycles.

listed securities raised by commenters such as the SIA,[29] the Commission believes that careful phasing in of decimal pricing is necessary to ensure the continued orderly operation of the markets and clearing organizations.

The Commission recognizes the concerns expressed by members of Congress and several small investors that decimal pricing in equity securities should be implemented as expeditiously as possible. We continue to believe that the conversion to decimal pricing will benefit investors by enhancing investor comprehension, facilitating globalization of our markets, and potentially reducing transaction costs. Nevertheless, the Commission must ensure that the conversion to decimal pricing is accomplished in an orderly and safe manners. In view of the concerns raised by commenters such as the SIA,[30] the Commission believes that an immediate full-scale introduction of decimalization, without adequate planning and systems testing, has the potential to create widespread operational problems in the markets and the securities industry, which in turn could adversely affect investors.[31]

The Commission is aware of the views of some commenters that the optimal conversion process for decimal pricing would involve simultaneous implementation plans for both exchange-listed and Nasdaq securities. Unfortunately, Nasdaq's inability to begin decimalization until March 31, 2001 renders this approach problematic. Moreover, many of the commenters that strongly preferred postponing decimal pricing until Nasdaq securities could be included recognized that at least some decimal pricing in exchange-listed securities would be feasible starting on or before September 4, 2000.

The remainder of the commenters believed that, with proper planning and testing, some phase-in of decimal pricing in exchange-listed securities and options should begin on or before September 4, 2000.[32] The Commission is therefore directing the Participants to develop a phase-in plan to begin decimal pricing exchange-listed securities and options on or before September 5, 2000.[33] The Participants should submit this plan to the Commission no later than 45 days after the issuance of this Order, and each Participant should submit the rule changes necessary to implement the phase-in plan pursuant to Section 19(b) of the Exchange Act no later than 60 days after the issuance of this Order. To facilitate a safe and coordinated conversion to decimal pricing, the phase-in plan should include a formal schedule of testing and readiness reporting to ensure that all Participants are ready to implement decimal pricing within the timeframes specified in the plan.[34] Further, the phase-in plan should provide for decimal pricing of at least some options on exchange-listed securities that are participating in the phase-in. The plan should provide for the phasing in of decimal pricing for at least some Nasdaq securities starting no later than March 12, 2001, with decimalization extended to all Nasdaq securities no later than April 9, 2001. Finally, the phase-in plan should provide for Full Implementation by April 9, 2001.[35] During this period, the Participants and the Commission will carefully monitor the effects of decimal pricing on systems capacity, liquidity, and trading behavior.

There was little agreement among the commenters regarding a minimum quoting increment during the phase-in periods; suggestions ranged from a dime [36] to a penny.[37] As a result, the phase-in plan may fix the minimum quoting increment during the phase-in periods, provided that the minimum increment is no greater than five cents [38] and no less than one cent for any equity security,[39] and that at least some equity securities are quoted in one cent minimum increments.[40]

After the securities industry has gained some experience with the implementation of decimal pricing, the Commission believes that the Participants should study the impact of the use of a minimum pricing variation of one penny on trading patterns, liquidity, and capacity (''Study''). For example, the inter-market communications systems are likely to experience increased quote traffic resulting from the conversion to decimal pricing and other market changes.[41] Therefore, two months after Full Implementation, the Participants must submit (individually or jointly) a study to the Commission regarding the impact of decimal pricing on systems capacity, liquidity, and trading behavior, including an analysis of whether there should be a uniform minimum increment for a security. If a Participant wishes to move to quoting in an increment of less than one cent, the Participant should include a full analysis of the potential impact of such trading on the Participant's market and the markets as a whole.

Within thirty days after submitting the Study, and absent Commission action, the Participants individually must submit for notice, comment, and Commission consideration, proposed rule changes under Section 19)b) of the Exchange Act to establish their individual choice of minimum increments by which equities or options are quoted on their respective markets.

It Is Hereby Ordered, pursuant to Section 11A(a)(3)(B) of the Exchange Act,[42] that the Participants act jointly in planning, discussing, developing, and submitting to the Commission a phase-in plan, as described above. The Participants are ordered to submit to the Commission a phase-in plan, as described above. The Participants are ordered to submit to the Commission a phase-in plan for the equity and options markets no later than July 24, 2000. In addition, each Participant is ordered to submit the rule changes necessary to implement the phase-in plan no later than August 7, 2000.[43] This Order will be effective until the Commission has acted on the proposed rule changes filed

[29] *See* SIA Letter *supra* note 14.

[30] The SIA's concerns over full-scale dual pricing are discussed in the text accompanying *supra* note 19.

[31] Moreover, the Commission notes that the securities industry almost universally expressed the view that trading the same securities in both decimals and fractions would be confusing to investors and would disrupt the markets.

[32] The Commission notes that, while the first industry test was held on April 8, 2000, industry testing is still ongoing and will continue throughout the summer.

[33] The Commission believes that the Participants should continue to canvass their members' readiness for decimalization to establish a feasible phase-in schedule with a view towards. Full Implementation by April 9, 2001.

[34] The Commission expects that the phase-in plan would also include a description of the securities industry's educational efforts directed at the investing public to assist them in understanding how specific securities would be priced.

[35] The Commission notes that, while it is mandating a phase-in of decimal pricing, the Participants may set a more aggressive implementation schedule if they determine that decimal pricing can be safely implemented before the April 9, 2001 deadline.

[36] *See* Edward Jones Letter *supra* note 13.

[37] *See* Letter *supra* note 14.

[38] Reasonable exceptions may be made for high priced securities.

[39] The plan should provide that the minimum increments are no less than one cent for any option on equity securities.

[40] The Commission assumes that exchange-listed stocks will be quoted on exchanges and the third market in the same increments. Participants should consider whether options should trade in the same format as the underlying security.

[41] *See* SIAC/SRI Consulting, *Mitigating Options Message Traffic Final Report* (Dec. 14, 1999).

[42] 15 U.S.C. 78k–1(a)(3)(B).

[43] Although Commission staff may be consulted in discussing the proposed phase-in plan, staff presence at joint discussions is not required by this Order. In issuing this Order, the Commission does not address: (a) any joint or other conduct that occurred prior to the issuance of this Order or prior Orders, and (b) any joint or other conduct occurring after the date of this Order that is not ordered or requested by this Order.

by the individual Participants pursuant to Section 19(b)(2) of the Exchange Act establishing the minimum increments by which equities or options are quoted on the respective markets or until otherwise ordered by the Commission.

By the Commission.

By: Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–15361 Filed 6–16–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

American Healthcare Providers, Inc.; Order of Suspension of Trading

June 15, 2000.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of American Healthcare Providers, Inc. (''American Healthcare'') because of questions regarding the accuracy of assertions by American Healthcare, and by others, in press releases concerning, among other things, a contract entered into by American Healthcare.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above listed company is suspended for the period from 9:30 a.m. EDT, on Thursday, June 15, 2000 through 11:59 p.m. EDT, on Wednesday, June 28, 2000.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–15488 Filed 6–15–00; 1:48 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42915; File No. SR–Amex–00–28]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC, Relating to an Increase in Fees for Registered Options Trader and Specialist Transactions in Exchange Traded Fund Shares

June 9, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 25, 2000, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to revise fees for Registered Options Trader and Specialist transactions in Exchange Traded Fund Shares.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(1) Purpose

The Ammex currently imposes charges for transactions in Portfolio Depositary Receipts (''PDRs''), Index Fund Shares and Trust Issued Receipts (''TIRs'') executed on the Exchange. Currently, charges include fees for Registered Options Trader and Specialist transactions in PDRs, Index Fund Shares and TIRs, including Nasdaq-100 Index Trust, SPDRs, DIAMONDS, WEBS, MidCap SPDRs, Select Sector SPDRs, and HOLDRs. The current rate for Specialist transactions in these products is $0.006 per share ($0.60 per 100 shares), capped at $300 per trade (50,000 shares). The current rate for Registered Options Trader transactions is $0.007 per share ($0.70 per 100 shares), capped at $350 per trade (50,000 shares). Off floor orders (*i.e.,* customer and broker-dealer) are charged $0.006 per share ($0.60 per 100 shares), capped at $100 per trade (16,667 shares).

The Exchange proposes to revise fees for Registered Options Trader and Specialist transactions in PDRs, Index Fund Shares and TIRs. The Exchange will apply the revised transaction fees to all Registered Options Trader and Specialist transactions in currently traded as well as newly listed PDRs, Index Fund Shares and TIRs. The proposed revision is in the amount of $0.03 per 100 shares for Specialist and Registered Options Trader transactions. As a result, upon implementation of the proposed fee revision, Specialist fees for transactions in PDRs, Index Fund Shares and TIRs will increase from $0.006 per share ($0.60 per 100 shares) to $0.0063 per share ($0.63 per 100 shares) and Registered Options Trader fees will increase from $0.007 per share ($0.70 per 100 shares) to $0.0073 per share ($0.73 per 100 shares).

The Exchange is undertaking the proposed revision in fees to offset increased Exchange expenses and costs associated with the continued development, listing and trading of additional PDRs, Index Fund Shares and TIRs. Because the proposed revision in fees will better enable the Exchange to further develop, list and trade new Exchange Traded Fund Shares, the Exchange believes it is appropriate and necessary to implement the revised fee schedule.

(2) Statutory Basis

The proposed rule change is consistent with Section 6(b)[3] of the Act in general and furthers the objectives of Section 6(b)(4)[4] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(4).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change, which establishes or changes a due, fee or other charge imposed by the Exchange, has become effective pursuant to Section 19(b)(3)(A) of the Act [5] and subparagraph (f)(2) of Rule 19b–4 thereunder.[6] At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 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 Room in Washington, D.C.

Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–AMEX–00–28 and should be submitted by July 10, 2000.

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(f)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–15345 Filed 6–16–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42916; File No. SR–CHX–00–17]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to Entry and Execution of ''Immediate or Cancel'' Limit Orders During the E-Session

June 9, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 1, 2000, the Chicago Stock Exchange, Incorporated (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange filed the proposal pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested person.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposal

The Exchange proposes to amend Article XXA, Rules 8 and 12 of the Exchange's rules, to permit entry and execution of ''immediate or cancel'' (''IOC'') limit orders during the Exchange's extended trading hours session (''E-Session''). The text of the proposed rule is below. Additions are in italics.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] The Exchange provided the Commission with written notice of its intent to file the proposal on May 24, 2000, pursuant to Rule 19b–4(f)(6). 17 CFR 240.19b–4(f)(6).

Chicago Stock Exchange Rules

Article XXA

Trading Rules and Procedures Applicable to Equity Trading During the Extended Trading Session

* * * * *

Manner of Making Bids and Offers

Rule 8. The only orders eligible to be entered during the E-Session are unconditional limit orders *or immediate or cancel limit orders* for E-Session Eligible Securities. These orders shall be electronically and directly transmitted, via MAX, to the specialist's limit order book; except that Floor Brokers (1) may route limit orders via MAX to the specialist's limit order book or, where permissible, transmit them to another market; or (2) may, after receiving a limit order to buy and a limit order to sell an equivalent amount of the same security (a) execute the orders at the specialist's post pursuant to Article XX, Rule 23 or (b) route the orders via MAX to the specialist's limit order book. NASDAQ System market makers, acting in their capacities as market makers, shall have direct telephone access to the specialist post in each NASDAQ/NM Security in which that market maker is registered as market maker to transmit orders for execution on the Exchange.

Rule 9. No change in text.

Rule 10. No change in text.

Rule 11. No change in text.

Rule 12. No member or member organization may accept an order from a non-member for execution in the E-Session without first disclosing to that non-member that: (1) Orders for E-Session Eligible Securities are eligible only for a single E-Session and, if not executed during that E-Session, shall automatically be canceled; (2) unconditional limit orders *and immediate or cancel limit orders* are the only orders that are eligible for execution in the E-Session; (3) there is likely to be less liquidity during trading that occurs once normal trading hours have ended and, as a consequence, there may be greater fluctuations in securities prices; and (4) distinct systems and facilities trade securities after normal trading hours have ended and, as a consequence, at any particular time, quotations and transaction prices for a security may vary among those systems.

** * * Interpretations and Policies*

.01 For purposes of this article ''immediate or cancel'' orders are limit orders requiring the broker or specialist to purchase or sell as much of the order as can be executed as soon as the order is received, with the unexecuted balance of the order to be canceled immediately,

II. Self-Regualtory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CHX included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The CHX has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Article XXA, Rules 8 and 12 of the Exchange's rules to permit entry and execution of IOC limit orders during the E-Session. The Exchange proposes that this change take effect on or after June 15, 2000.

On October 13, 1999, the Commission approved rules allowing the Exchange to implement the E-Session.[6] During the E-Session, which operate between 3:30 p.m. and 5:30 p.m., Central Time, Exchange specialists and floor brokers currently may only accept and execute unconditional limit orders in selected eligible securities. The Exchange proposes to amend its rules to permit CHX specialists and floor brokers to execute both unconditional limit orders and IOC limit orders. IOC limit orders are limit orders that require the executing broker or specialist to purchase or sell as much of the order as can be executed as soon as the order is received, with the unexecuted balance of the order to be canceled immediately. For example, if a specialist is quoting a market of 50/ 50¼ 3000 shares up, and the specialist receives an IOC limit order to buy 500 shares at 50¼, the specialist would fill the order up to 300 shares and cancel the remainder of the order. Similarly, if a specialist with the same quote receives an immediate or cancel limit order to buy 500 shares at 50⅛, a price away from the market, the specialist would not fill any portion of the order and it would be canceled immediately.

The Exchange seeks to add IOC limit orders to the E-Sesson to facilitate an anticipated linkage with other participants in the after-hours trading environment. Beginning June 15, 2000, the Exchange hopes to have in place a linkage with a group of electronic communications networks (''ECNs'' that would allow CHX quotes to be displayed and accessible to participating markets.[7] In this new environment, an order handling system maintained by one of the ECNs would seek out the best bid or offer among participating ECNs and the Exchange, and would route an order to that market. Because many ECNs accept IOC limit orders during their after-hours trading sessions, the Exchange can participate in this linkage only if it has the ability to accept and execute IOC limit orders.

Given the anticipated benefits of this linkage, and the relative lack of risk to investors if IOC limit orders are rendered eligible for the E-Session, the Exchange believes that the proposed rule change is warranted.

Statutory Basis

The CHX believes the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[8] The Exchange believes the proposed rule change is consistent with Section 6(b)(5) of the Act[9] in that it is designed to promote just and equitable principles of trade, to remove impediments to, and to perfect the mechanism of, a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement of Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Exchange has requested that the Commission accelerate the operative date. The Commission finds that it is appropriate to designate the proposal to become operative as of June 15, 2000 because such designation is consistent with the protection of investors and the public interest. Acceleration of the operative date will allow the CHX to participate in a linkage with other participants in the after-hours trading environment, thereby improving transparency in the after-hours environment, and allowing investors greater choices with regard to the types of orders they may place after-hours. For these reasons, the Commission finds good cause to designate that the proposal become operative as of June 15, 2000.[12]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal 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 provision of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All

[6] *See* Securities Exchange Act Release No. 42004 (October 13, 1999), 64 FR 56548 (October 20, 1999).

[7] CHX quotes would continue to be publicly displayed as required by the CTA and CQ plans.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

submissions should refer to file number SR–CHX–00–17 and should be submitted by July 10, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–15346 Filed 6–16–00; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of Reporting Requirements Submitted for OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before July 19, 2000. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: Agency Clearance Officer, Jacqueline White, Small Business Administration, 409 3rd Street, S.W., 5th Floor, Washington, D.C. 20416; and OMB Reviewer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205–7044.

SUPPLEMENTARY INFORMATION:

Title: Survey of Job Creation and Retention in the DELTA Program.

No.: 1989.

Frequency: On Occasion.

Description of Respondents: Small firms that receive a SBA DELTA Loan.

Annual Responses: 35.

Annual Burden: 8.25.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 00–15419 Filed 6–16–00; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Economic Injury Disaster #9H52]

State of New York

Albany County and the contiguous counties of Columbia, Greene, Schoharie, Schenectady, Saratoga, and Rensselaer in the State of New York constitute an economic injury disaster loan area due to an embankment failure (landslide) that occurred on May 16, 2000 in the Town of Bethlehem, as a result of heavy rainfall. Eligible small businesses and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance as a result of this disaster until the close of business on March 9, 2001 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd, South, 3rd Floor, Niagara Falls, NY 14303.

The interest rate for eligible small businesses and small agricultural cooperatives is 4 percent.

(Catalog of Federal Domestic Assistance Program No. 59002)

Dated: June 9, 2000.

Kris Swedin,

Acting Administrator.

[FR Doc. 00–15423 Filed 6–16–00; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3263]

State of Tennessee

Cheatham County and the contiguous counties of Davidson, Dickson, Montgomery, Robertson, and Williamson in the State of Tennessee constitute a disaster area due to damages caused by severe thunderstorms, tornadoes, and heavy rains that occurred May 23–31, 2000. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on August 11, 2000 and for economic injury until the close of business on March 12, 2001 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rates are:

	Percent
For Physical Damage:	
HOMEOWNERS WITH CREDIT AVAILABLE ELSEWHERE	7.375
HOMEOWNERS WITHOUT CREDIT AVAILABLE ELSEWHERE	3.687
BUSINESSES WITH CREDIT AVAILABLE ELSEWHERE	8.000
BUSINESSES AND NON-PROFIT ORGANIZATIONS WITHOUT CREDIT AVAILABLE ELSEWHERE	4.000
OTHERS (INCLUDING NON-PROFIT ORGANIZATIONS) WITH CREDIT AVAILABLE ELSEWHERE	6.750
For Economic Injury:	
BUSINESSES AND SMALL AGRICULTURAL COOPERATIVES WITHOUT CREDIT AVAILABLE ELSEWHERE	D4.000%

The numbers assigned to this disaster are 326306 for physical damage and 9H5300 for economic injury.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: June 12, 2000.

Aida Alvarez,

Administrator.

[FR Doc. 00–15422 Filed 6–16–00; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 3337]

Bureau for International Narcotics and Law Enforcement Affairs; International Demand Reduction Program (IDR)

AGENCY: Office of Europe, NIS, and Training; Bureau for International

[13] 17 CFR 200.30–3(a)(12).

Narcotics and Law Enforcement Affairs, State.

ACTION: Notice.

SUMMARY: State Department's Bureau for International Narcotics and Law Enforcement Affairs (INL) developed the International Demand Reduction program (IDR) in 1978 to assist foreign countries to mobilize public and private sectors in effective support of national narcotic control policies and programs. The program was enhanced in 1990 to assist foreign countries with the development of self-sustaining prevention, education, and treatment programs. The goal of the program is to enhance foreign political determination to combat illegal drug abuse and convince governments to dedicate sufficient resources to effectively fight this problem.

The IDR program has been modified to include the participation of non-Federal agencies (*e.g.,* universities, nonprofit organizations) in the development of national, regional, and international networks of public/private sector organizations to strengthen international cooperation and actions against the drug trade. This component of the IDR program has a timeframe of 2000–2003.

DATES: Strict deadlines for submission to the FY 2000 process are: A full proposal must be received at INL no later than Friday, July 28. Letters of intent will not be required. We anticipate that review of full proposals will occur during August 2000 and funding should begin during September of 2000 for most approved projects. September 25, 2000 should be used as the proposed start date on proposals, unless otherwise directed by a program manager. Applicants should be notified of their status within 6 months of submission deadline. All proposals must be submitted in accordance with guidelines below. Failure to heed these guidelines may result in proposals being returned without review.

ADDRESSES: Proposals may be submitted to: U.S. Department of State, Bureau of International Narcotics and Law Enforcement Affairs, Navy Hill South, 2430 E Street NW., Washington, DC 20520, Attn: Linda Gower.

FOR FURTHER INFORMATION CONTACT: Linda Gower at above address, TEL: 202–776–8774, FAX: 202–776–8775, or Thom Browne at above address, TEL: 202–736–4662, FAX: 202–647–6962.

Once the RFA deadline has passed, DOS staff may not discuss competition in any way with applicants until the proposal review process has been completed.

SUPPLEMENTARY INFORMATION:

Funding Availability

This Program Announcement is for one project to be conducted by agencies/programs outside the Federal government, over a period of up to three years. Actual funding levels will depend upon availability of funds. Current plans are for up to a total of $1,600,000 per year for one-three years to be available for one new IDR award. The funding instrument for this award will be a grant or a cooperative agreement. Funding for non-U.S. institutions and contractual arrangements for services and products for delivery to INL are not available under this announcement. Matching share, though encouraged, is not required by this program.

Program Authority

Authority: Section 635(b) of the Foreign Assistance Act of 1961, as amended.

Program Objectives

The goal of the IDR program is to enhance foreign political determination to combat illegal drug abuse and convince governments to dedicate sufficient resources to effectively fight this problem.

The program objectives of the IDR program are: (1) Strengthen the ability of host nations to conduct more effective demand reduction efforts on their own; (2) encourage drug producing and transit countries to invest resources in drug awareness, demand reduction, and training to build public support and political will for implementing counternarcotics programs; (3) improve coordination of, and cooperation in, international drug awareness and demand reduction issues involving the U.S., donor countries and international organizations; and (4) utilize accomplishments in the international program to benefit U.S. demand reduction services at home.

Program Priorities

The FY 2000 IDR Program Announcement invites international demand reduction coalition development proposals for the following priority:

(1) Development of a Western Hemisphere (Canada, United States, Mexico, Caribbean, Central and South America) coalition of public/private sector demand reduction organizations.

For the purpose of this announcement, the development of a Western Hemisphere demand reduction coalition should include the establishment of a U.S.-based secretariat (site proposed by applicant), a regional office in Latin America (site proposed by applicant), an internet/web site system to link coalition members, a Board of Directors meeting to develop the organization's constitution and by-laws, three regional-level meetings per year in countries throughout the hemisphere (locations identified by applicant and INL after grant award), one national-level meeting per year in each participating country (estimated at 20 participating countries), the establishment of a model community-based prevention program in Latin America for network participants to emulate, and a drug prevention technical assistance component for member organizations that includes consultations on establishing national-level coalitions of drug prevention programs, developing media-based anti-drug messages, and maintaining drug-free communities.

Any grant applicants who will be working with counterpart demand reduction programs to develop the proposed coalitions and model program may sub-grant or sub-contract services to assist in fulfilling program objectives.

Eligibility

Eligibility is limited to non-Federal agencies and organizations. Applicants are urged to seek collaboration with counterpart demand reduction programs either in the U.S. or overseas. Experience of project staff in developing demand reduction coalitions in international settings is mandatory. Universities and non-profit organizations are included among entities eligible for funding under this announcement. Direct funding for non-U.S. institutions is not available under this announcement.

Evaluation Criteria

Consideration for financial assistance will be given to those proposals which address Program Priorities identified above and meet the following evaluation criteria:

(1) *Relevance (15%):* Importance and relevance to the goal and objectives of the IDR program identified above.

(2) *Methodology (20%):* Adequacy of the proposed approach and activities, including development of appropriate procedures for establishing demand reduction coalitions in international settings; development of adequate communications strategies between demand reduction programs and coalitions; planning and organizing international meetings; project milestones, and final products.

(3) *Readiness (25%):* Relevant history and experience in developing and/or supporting international demand reduction coalitions and meetings, in

addition to previous experience in providing technical assistance in the area of international drug prevention, strength of proposed project team, past performance record of applicants.

(4) *Linkages (25%):* Connections to existing demand reduction organizations/programs and coalitions throughout the western hemisphere.

(5) *Costs (15%):* Adequacy/efficiency of the proposed resources; appropriate share of total available resources; applicants offering cost sharing will receive points.

Selection Procedures

All proposals will be evaluated and ranked in accordance with the assigned weights of the above evaluation criteria by independent peer panel review composed of INL and other Federal USG agency experts. The panel's recommendations and evaluations will be considered by the program managers in final selections. Those ranked by the panel and program managers as not recommended for funding will not be given further consideration and will be notified of non-selection. For the proposals rated for possible funding, the program managers will: (a) Ascertain which proposals meet the objectives and fit the criteria posted; (b) select the proposal to be funded; (c) determine the total duration of funding for the proposal; and (d) determine the amount of funds available for the proposal.

Unsatisfactory performance by a recipient under prior

Federal awards may result in an application not being considered for funding.

Proposal Submission

The guidelines for proposal preparation provided below are mandatory. Failure to heed these guidelines may result in proposals being returned without review.

(a) Full Proposals

(1) Proposals submitted to INL must include the original and three unbound copies of the proposal. (2) Program descriptions must be limited to 20 pages (numbered), not including budget, personal vitae, letters of support and all appendices, and should be limited to funding requests for one to three years duration. Federally mandated forms are not included within the page count. (3) Proposals should be sent to INL at the above address. (4) Facsimile transmissions of full proposals will not be accepted

(b) Required Elements

(1) Signed title page: The title page should be signed by the Project Director (PD) and the institutional representative and should clearly indicate which project area is being addressed. The PD and institutional representative should be identified by full name, title, organization, telephone number and address. The total amount of Federal funds being requested should be listed for each budget period.

(2) *Abstract:* An abstract must be included and should contain an introduction of the problem, rationale and a brief summary of work to be completed. The abstract should appear as a separate page, headed with the proposal title, institution(s) name, investigator(s), total proposed cost and budget period.

(3) *Prior demand reduction coalition building and drug prevention technical assistance experience:* A summary of prior demand reduction coalition building and drug prevention technical assistance experience (especially those conducted in foreign countries) should be described, including coalition building and technical assistance activities related to program priorities identified above. Reference to each prior coalition building/technical assistance award should include the title, agency, award number, period of award and total award. The section should be a brief summary and should not exceed two pages total.

(4) *Statement of work:* The proposed project must be completely described, including identification of the problem, project objectives, proposed coalition building/technical assistance methodology, relevance to the goal and objectives of the IDR program, and the program priorities listed above. A year-by-year summary of proposed work must be included clearly indicating that each year's proposed work is severable and can easily be separated into annual increments of meaningful work. The statement of work, including figures and other visual materials, must not exceed 20 pages of length.

(5) *Budget:* Applicants must submit a Standard form 424 (4–92) ''Application for Federal Assistance,'' including a detailed budget using the Standard Form 424a (4–92), ''Budget Information—Non-Construction Programs.'' The proposal must include total and annual budgets corresponding with the descriptions provided in the statement of work.

Additional text to justify expenses should be included (*i.e.,* salaries and benefits by each proposed staff person; direct costs such as travel (airfare, per diem, miscellaneous travel Indicate if indirect rates are DCAA or other Federal agency approved or proposed rates and provide a copy of the current rate agreement. In addition, furnish the same level of information regarding sub-grantee costs, if applicable, and submit a copy of your most recent A–110 audit report.

(6) *Vitae:* Abbreviated curriculum vitae are sought with each proposal. Vitae for each project staff person should not exceed three pages in length.

(c) Other Requirements

Primary Applicant Certification: All primary applicants must submit a completed Form CD–511, ''Certification Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying.'' Applicants are also hereby notified of the following:

1. *Non procurement Debarment and Suspension:* Prospective participants (as defined at 15 CFR part 26, section 105) are subject to 15 CFR part 26, ''Non-procurement Debarment and Suspension,'' and the related section of the certification form prescribed above applies;

2. *Drug Free Workplace:* Grantees (as defined at 15 CFR part 26, section 605) are subject to 15 CFR Part 26, Subpart F, ''Government wide Requirements for Drug-Free Workplace (Grants)'' and the related section of the certification form prescribed above applies;

3. *Anti-Lobbying:* Persons (as defined at 15 CFR Part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, ''Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions,'' and the lobbying section of the certification form prescribed above applies to applications/bids for grants of more than $100,000; and

4. *Anti-Lobbying Disclosures:* Any applicant that has paid or will pay for lobbying using any funds must submit SF-LLL, ''Disclosure of Lobbying Activities,'' as required under 15 CFR part 28, appendix B.

Lower Tier Certifications

(1) Recipients must require applicants/bidders for sub-grants or lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, ''Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions and Lobbying'' and disclosure Form SF-LLL, ''Disclosure of Lobbying Activities.'' Form CD–512 is intended for the use of recipients and should not be transmitted to Department of State (DOS). SF-LLL submitted by any tier recipient or sub-recipient should be submitted to DOS in accordance with

the instructions contained in the award document.

(2) Recipients and sub-recipients are subject to all applicable Federal laws and Federal and Department of State policies, regulations, and procedures applicable to Federal financial assistance awards.

(3) Pre-award Activities—If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that may have been received, there is no obligation to the applicant on the part of Department of State to cover pre-award costs.

(4) This program is subject to the requirements of OMB Circular No. A–110, ''Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations,'' OMB Circular No. A–133, ''Audits of Institutions of Higher Education and Other Non-Profit Institutions,'' and 15 CFR Part 24, ''Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments,'' as applicable. Applications under this program are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

(5) All non-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associate with the applicant have been convicted of, or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management, honesty, or financial integrity.

(6) A false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

(7) No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either:

(i) The delinquent account is paid in full,

(ii) a negotiated repayment schedule is established and at least one payment is received, or

(iii) Other arrangements satisfactory to the Department of State are made.

(8) Buy American-Made Equipment or Products—Applicants are encouraged that any equipment or products authorized to be purchased with funding provided under this program must be American-made to the maximum extent feasible.

(9) The total dollar amount of the indirect costs proposed in an application under this program must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award or 100 percent of the total proposed direct cost dollar amount in the application, whichever is less.

(d) If an application is selected for funding, the Department of State has no obligation to provide any additional future funding in connection with the award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of the Department of State.

(e) In accordance with Federal statutes and regulations, no person on grounds of race, color, age, sex, national origin or disability shall be excluded from participation in, denied benefits of or be subjected to discrimination under any program or activity receiving assistance from the INL IDR program. Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB control number. The standard forms have been approved by the Office of Management and Budget pursuant to the Paperwork Reduction Act under OMB approval number 0348–0043, 0348–0044, and 0348–0046.

Classification: This notice has been determined to be not significant for purposes of Executive Order 12866.

Dated: June 12, 2000.

Thomas M. Browne Jr.,

Deputy Director, Office of Europe, NIS, and Training, Bureau for International Narcotics and Law Enforcement Affairs, Department of State.

[FR Doc. 00–15370 Filed 6–16–00; 8:45 am]

BILLING CODE 4710–17–U

TENNESSEE VALLEY AUTHORITY

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Tennessee Valley Authority (Meeting No. 1520).

TIME AND DATE: 9 a.m. (EDT), June 21, 2000.

PLACE: TVA Knoxville West Tower Auditorium, 400 West Summit Hill Drive, Knoxville, Tennessee.

STATUS: Open.

Agenda

Approval of minutes of meeting held on May 11, 2000.

New Business

C—Energy

C1. Supplement to indefinite quantity term Contract No. 97X8F–174063–000 with Piping and Equipment Company for pipe, pipe fittings, and related materials.

C2. Supplements to contracts with Mesa Associates, Inc., and Sargent & Lundy LLC for engineering and design services for Transmission/Power Supply Group.

C3. Supplement to contract with The L. E. Myers Company for general construction/craft services related to Transmission/Power Supply Group's construction program.

C4. Supplement to Contract No. 97X1E–197652 for transmission equipment and supplement to Contract No. 99P4E–228019 for power transformers with ABB T&D Company.

C5. Term contract with Electric Fuels Corporation for low-sulfur coal supply to Kingston Fossil Plant.

E—Real Property Transactions

E1. Approval of a public auction of approximately 3.07 acres of TVA land affecting the former Mayfield, Kentucky, Area Operating Headquarters in Graves County, Kentucky (Tract No. XMAH–1), and rescission of the January 27, 2000, approval of the sale of a permanent easement affecting this tract to the Mayfield Electric and Water Systems.

E2. Abandonment of approximately 3.55 acres of the Norris Hydro-Clinton transmission line easement in Anderson County, Tennessee (Tract Nos. NDC–13 and NDC–14).

E3. Grant of a permanent easement for a sewerline affecting approximately 2.95 acres of TVA land on Pickwick Reservoir in Lauderdale County, Alabama (Tract No. XTPR–68S).

E4. Deed modification affecting approximately 0.41 acre of former TVA land on Chickamauga Reservoir in Hamilton County, Tennessee (Tract No. XCR–71:37).

E5. Deed modification affecting approximately 0.10 acre of former TVA land on Watts Bar Reservoir in Roane County, Tennessee (Tract No. XTWBR–59).

E6. Deed modification affecting approximately 13.6 acres of land on Chickamauga Reservoir in Hamilton County, Tennessee (Tract No. XCR–44).

E7. Grants of permanent easements for a sewage treatment plant (Tract No. XTPR–65SP), a wastwater discharge line (Tract No. XTPR–66S), and a recreational easement (Tract No. XTPR–67RE) for the use and benefit of the Tennessee Department of Environment and Conservation, to serve Pickwick

Landing State Park and Pickwick Dam facilities affecting approximately 85.2 acres of land on Pickwick Reservoir in Hardin County, Tennessee.

E8. Modification of a permanent easement for public recreation affecting approximately 0.2 acre of land on Fort Loudoun reservoir in Knox County, Tennessee (Tract No. XTFL–122RE), to allow for commercial uses in addition to public recreation.

F—Unclassified

1. Approval to file a condemnation case to acquire additional easement rights for an existing transmission line easement involving the Murfreesboro-Smyrna No. 2 transmission line in Rutherford County, Tennessee.

Information Item

1. Designation of law enforcement officer positions under Civil Service Retirement System and Office of Personnel Management regulations.

For more information: Please call TVA Public Relations at (423) 632–6000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 898–2999. People who plan to attend the meeting and have special needs should call (865) 632–6000.

Dated: June 14, 2000.

Edward S. Christenbury,

General Counsel and Secretary.

[FR Doc. 00–15459 Filed 6–15–00; 10:51 am]

BILLING CODE 8120–08–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

African Growth and Opportunity Act Implementation Subcommittee of the Trade Policy Staff Committee; Public Comments on Determining Country Eligibility for Benefits Under the African Growth and Opportunity Act, Title I of the Trade and Development Act of 2000

ACTION: Notice and request for comments.

SUMMARY: The African Growth and Opportunity Act Implementation Subcommittee of the Trade Policy Staff Committee is requesting written public comments on the eligibility of sub-Saharan African countries to receive the benefits of the recently-enacted African Growth and Opportunity Act (AGOA). The notice lists the eligibility criteria that must be considered under the AGOA, lists the countries considered to be sub-Saharan African countries under the AGOA, provides the deadline for written comments, and explains how to make written comments on the eligibility criteria elaborated in the AGOA. Comments received will be considered by the African Growth and Opportunity Act Implementation Subcommittee of the Trade Policy Staff Committee, chaired by USTR, in developing recommendations on country eligibility for the President. Initial designation of beneficiary countries under the AGOA should be made in Fall 2000. Comments received related to the child labor criteria may also be considered by the Secretary of Labor in determining the findings required under Section 504 of the Trade Act of 1974, as amended.

DATES: Public Comments are due by noon, July 14, 2000.

FOR FURTHER INFORMATION CONTACT: Office of African Affairs, Office of the United States Trade Representative, 600 17th Street, NW, Room 501, Washington, DC 20508. Telephone (202) 395–9514.

SUPPLEMENTARY INFORMATION: Signed into law on May 18, 2000, the Trade and Development Act of 2000 contains, in Title I, provisions for enhanced trade benefits for sub-Saharan African countries. Titled the ''African Growth and Opportunity Act'' (AGOA), the AGOA amends the Generalized System of Preferences (GSP), Title V of the Trade Act of 1974, as amended (the Trade Act) (19 USC 2461 *et seq.*), to authorized the President to designated sub-Saharan African countries as eligible for preferential tariff treatment for certain articles.

Eligibility Criteria

Under AGOA, the eligibility criteria that must be considered include those in Section 104 of the AGOA and in Section 502 of the Trade Act. The requirements of Section 104 of the AGOA are:

''(a) In General.—The President is authorized to designate a sub-Saharan African country as an eligible sub-Saharan African country if the President determines that the country——

(1) Has established, or is making continual progress toward establishing—

(A) A market-based economy that protects private property rights, incorporates an open rules-based trading system, and minimizes government interference in the economy through measures such as price controls, subsidies, and government ownership of economies assets;

(B) The rule of law, political pluralism, and the right to due process, a fair trial, and equal protection under the law;

(C) The elimination of barriers to United States trade and investment, including by—

(i) The provision of national treatment and measures to create an environment conductive to domestic and foreign investment;

(ii) The protection of intellectual property; and

(iii) The resolution of bilateral trade and investment disputes;

(D) Economic policies to reduce poverty, increase the availability of health care and educational opportunities, expand physical infrastructure, promote the development of private enterprise, and encourage the formation of capital markets through micro-credit or other programs;

(E) a system to combat corruption and bribery, such as signing and implementing the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions; and

(F) protection of internationally recognized workers rights, including the right of association, the right to organize and bargain collectively, a prohibition on the use of any form of forced or compulsory labor, a minimum age for the employment of children, and acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health;

(2) does not engage in activities that undermine United States national security or foreign policy interest; and

(3) does not engage in gross violations of internationally recognized human rights or provide support for acts of international terrorism and cooperates in international efforts to eliminate human rights violations and terrorist activities.

(b) Continuing Compliance: If the President determines that an eligible sub-Saharan African country is not making continual progress in meeting the requirements described in subsection (a)(1), the President shall terminate the designation of the country made pursuant to subsection (a).''

The applicable GSP criterion as amended by the AGOA (Section 502(b)(2)(H) of the Trade Act) is:

''(2) Other bases for ineligibility.—The President shall not designate any country a beneficiary developing country under this title if any of the following applies:

* * * * *

(H) Such country has not implemented its commitments to eliminate the worst forms of child labor.''

Countries Considered to be sub-Saharan African Countries

Section 107 of the AGOA defines the terms ''sub-Saharan Africa'', ''sub-Saharan African country'', ''country in sub-Saharan Africa'', and ''countries in sub-Saharan Africa'' as constituting the following countries (or any successor political entities):

''Republic of Angola (Angola).
Republic of Benin (Benin).
Republic of Botswana (Botswana).
Burkina Faso (Burkina).
Republic of Burundi (Burundi).
Republic of Cameroon (Cameroon).
Republic of Cape Verde (Cape Verde).
Central African Republic.
Republic of Chad (Chad).
Federal Islamic Republic of Comoros (Comoros).

Democratic Republic of Congo.
Republic of the Congo (Congo).
Republic of Cote d'Ivoire (Cote d'Ivoire).
Republic of Djibouti (Djibouti).
Republic of Equatorial Guinea (Equatorial Guinea).
State of Eritrea (Eritrea).
Ethiopia.
Gabonese Republic (Gabon).
Republic of the Gambia (Gambia).
Republic of Ghana (Ghana).
Republic of Guinea (Guinea).
Republic of Guinea-Bissau (Guinea-Bissau).
Republic of Kenya (Kenya).
Kingdoom of Lesotho (Lesotho).
Republic of Liberia (Liberia).
Republic of Madagascar (Madagascar).
Republic of Malawi (Malawi).
Republic of Mali (Mali).
Islamic Repubic of Mauritania (Mauritania).
Republic of Mauritius (Mauritius).
Republic of Mozambique (Mozambique).
Republic of Namibia (Namibia).
Republic of Niger (Niger).
Federal Republic of Nigeria (Nigeria).
Republic of Rwanda (Rwanda).
Democratic Republic of Sao Tome and Principe (Sao Tome and Principe).
Republic of Senegal (Senegal).
Republic of Seychelles (Seychelles).
Republic of Sierra Leone (Sierra Leone).
Somalia.
Republic of South Africa (South Africa).
Republic of Sudan (Sudan).
Kingdom of Swaziland (Swaziland).
United Republic of Tanzania (Tanzania).
Republic of Togo (Togo).
Republic of Uganda (Uganda).
Republic of Zambia (Zambia).
Republic Zimbabwe (Zimbabwe).

Submitting Written Comments

Interested parties are invited to submit comments regarding the eligibility of countries noted above for designation as beneficiary sub-Saharan African Countries. All submissions must include an original and twenty (20) copies in English. All submissions should clearly identify on the cover page of the submission the country of countries and eligibility criterion or criteria discussed within the submission. All pages should be clearly numbered and include the name of the person and/or organization submitting the written comments. Persons submitting written comments should provide the original and twenty (20) copies no later than noon on July 14, 2000, to Gloria Blue, Executive Secretary, Trade Policy Staff Committee, Office of the United States Trade Representative, Room 122, 600 17th Street N.W., Washington D.C. 20508. Public versions of all documents relating to this review will be available for inspection by appointment in the USTR public reading room. Appointments may be made from 10 a.m. to noon and 1 p.m. to 4 p.m. by calling (202) 395–6186.

Submissions that are granted ''business confidential'' status and other information submitted in confidence will not be available for public inspection. Business confidential information will be subject to the requirements of 15 CFR 2003.6. A justification as to why the information contained in the submission should be treated confidentially must be included in the submission. If a document contains such business confidential information, an original and twenty (20) copies of the business confidential versions of the document along with an original and twenty (20) copies of a non-confidential version must be submitted. The document that contains business confidential information should be clearly marked ''business confidential'' at the top and bottom of each page. The version that does not contain business confidential information (the public version) should also be clearly marked at the top and bottom of every page (either ''public version'' or ''nonconfidential'').

Rosa M. Whitaker,

Assistant U.S. Trade Representative for Africa.

[FR Doc. 00–15406 Filed 6–16–00; 8:45 am]

BILLING CODE 3190–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Generalized System of Preferences (GSP); Worker Rights; Deadline for Submitting Public Comment on Limitations on Duty-Free Treatment of Certain Bangladeshi Products

AGENCY: Office of the United States Trade Representative (USTR).

ACTION: Notice of request for public comment.

SUMMARY: This notice informs the public that because Bangladesh has not taken sufficient steps to provide internationally recognized worker rights, the U.S. government is preparing to withdraw, in whole or in part, duty-free treatment accorded to imports from Bangladesh under the U.S. Generalized System of Preferences and sets forth the deadline for submitting public comments. All GSP eligible products imported from Bangladesh could be affected.

FOR FURTHER INFORMATION CONTACT: GSP Subcommittee, Office of the United States Trade Representative, 600 17th Street, NW, Room 518, Washington, DC 20508 (Tel. 202/395–6971). Public versions of all documents relating to this review may be seen by appointment in the USTR public Reading Room between 9:30–12 a.m. and 1–4p.m. (Tel. 202/395–6186).

SUPPLEMENTARY INFORMATION: The GSP program is authorized pursuant to Title V of the Trade Act of 1974, as amended (''the Trade Act'') (19 U.S.C. 2461 et seq.) The GSP program grants duty-free treatment to designated eligible articles that are imported from designated beneficiary developing countries. Once grated, GSP benefits may be withdrawn, suspended or limited by the President with respect to any article or with respect to any country. In making this determination, the President must consider several factors, one of which is whether or not such country has taken or is taking steps to afford to workers in that country (including any designated zone in that country) internationally recognized worker rights (19 U.S.C. 2462(c)(7)). Bangladesh is a beneficiary of the GSP program. In 1999, almost $30 million of Bangladeshi imports benefitted from GSP.

In 1991 Bangladesh committed to restore freedom of association to the nation's export processing zone (EPZ) by 1997, and a GSP worker rights review was terminated. However, the national labor law still has not been extended to export processing zones (there now are more than one).

The AFL filed a petition in June 1999 calling for the revocation of GSP benefits. The U.S. Government has held several discussions with Bangladeshi authorities in an effort to successfully resolve this issue. However, freedom of association for workers in the EPZs remains elusive.

As a result, the Trade Policy Staff Committee (TPSC) is seeking public comment on the impact of suspending duty-free treatment for articles imported from Bangladesh. After receiving public comments, a decision will be made on the articles that will lose GSP benefits. Complete suspension from GSP will be considered.

Opportunities for Public Comment and Inspection Of Comments

The GSP Subcommittee on the TPSC invites comments in support of, or in opposition to, limitations of duty-free treatment on imports from Bangladesh under the GSP program. The deadline for submissions is 5 PM on Tuesday, August 15, 2000.

Comments must be submitted in 15 copies, in English, to the Chairman of the GSP Subcommittee, Trade Policy Staff Committee, 600 17th Street, N.W., Room 513, Washington, D.C. 20508. Information and comments will be subject to public inspection by appointment with the staff of the USTR

Public Reading Room, except for information granted ''business confidential'' status pursuant to 15 CFR 2003.6 and 2007.7. If the document contains business confidential information, 15 copies of a nonconfidential version of the submission along with 15 copies of the confidential version must be submitted. The business confidential version of the submission should be clearly marked ''Submitted in Confidence'' at the top and bottom of each and every page of the document. A nonconfidential summary of the business confidential information must be included with the business confidential submission, along with a written explanation of why the business confidential material should be protected. The version which does not contain business confidential information (the public version) should also be clearly marked at the top and bottom of each and every page (either ''public version'' of ''non-confidential''). Submissions should comply with 15 CFR Part 2007, including sections 2007.0, and 2007.1.

Jon Rosenbaum,

Assistant U.S. Trade Representative for Trade and Development.

[FR Doc. 00–15410 Filed 6–1–00; 8:45 am]

BILLING CODE 3190–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Benefits for Caribbean Basin Countries: Notice of Request for Public Comment Regarding Eligibility Criteria for Beneficiaries of the United States-Caribbean Basin Trade Partnership Act (CBTPA)

AGENCY: Office of the United States Trade Representative.

ACTION: Notice and solicitation of public comment.

SUMMARY: The Caribbean/Central America Subcommittee of the Trade Policy Staff Committee is requesting public comment on the eligibility of Caribbean Basin countries to receive the benefits of the recently-enacted United States-Caribbean Basin Trade Partnership Act (CBTPA). This notice addresses the eligibility criteria that must be considered under the CBTPA, the countries considered to be Caribbean Basin countries under the CBTPA, and the deadline for written comments, and explains how written comments are to be made on the eligibility criteria elaborated in the CBTPA. Comments received will be considered by the Caribbean/Central America Subcommittee of the Trade Policy Staff Committee, chaired by USTR, in developing recommendations on country eligibility for the President.

FOR FURTHER INFORMATION CONTACT: For procedural questions, contact: Gloria Blue, Office of the United States Trade Representative, 600 17th Street, NW., Room 122, Washington, DC 20508. The telephone number is (202) 395–3475. For substantive questions, contact Bennett Harman, Office of the Western Hemisphere, Office of the United States Trade Representative, 600 17th Street, NW., Room 523, Washington, DC 20508. The telephone number is (202) 395–5190.

SUPPLEMENTARY INFORMATION: Signed into law on May 18, 2000, the Trade and Development Act of 2000 contains, in Title II, provisions for enhanced trade benefits for Caribbean Basin countries. Titled the ''United States-Caribbean Basin Trade Partnership Act'' (CBTPA), the CBTPA amends the Caribbean Basin Economic Recovery Act (CBERA), also known as the Caribbean Basin Initiative (CBI) (19 U.S.C. 2701 *et seq.)*, to provide preferential tariff treatment for certain products presently excluded from such treatment, including duty-free and quota-free treatment for certain textile and apparel articles.

Eligibility Criteria

Eligibility for the enhanced trade benefits under the CBTPA is limited to countries that the President designates as ''CBTPA Beneficiary Countries.'' The criteria that the President must take into account in designating countries as CBTPA Beneficiary Countries include the existing criteria in Section 212(b) and (c) of the CBERA, 19 USC 2702(b)–(c), as well as several new criteria added by the CBTPA. The new criteria, which are set out in section 211(a) of the CBTPA, include the following:

''(i) Whether the beneficiary country has demonstrated a commitment to—

''(I) Undertake its obligations under the WTO, including those agreements listed in section 101(d) of the Uruguay Round Agreements Act, on or ahead of schedule; and

''(II) Participate in negotiations toward the completion of the FTAA or another free trade agreement.

''(ii) The extent to which the country provides protection of intellectual property rights consistent with or greater than the protection afforded under the Agreement on Trade-Related Aspects of Intellectual Property Rights described in section 101(d)(15) of the Uruguay Round Agreements Act.

''(iii) The extent to which the country provides internationally recognized worker rights, including—

''(I) The right of association;

''(II) The right to organize and bargain collectively;

''(III) A prohibition on the use of any form of forced or compulsory labor;

''(IV) A minimum age for the employment of children; and

''(V) Acceptable conditions of work with respect to minimum wages, hours or work, and occupational safety and health;

''(iv) Whether the country has implemented its commitments to eliminate the worst forms of child labor, as defined in section 507(6) of the Trade Act of 1974.

''(v) The extent to which the country has met the counter-narcotics certification criteria set forth in section 490 of the Foreign Assistance Act of 1961 (22 U.S.C. 2291j) for eligibility for United States assistance.

''(vi) The extent to which the country has taken steps to become a party to and implements the Inter-American Convention Against Corruption.

''(vii) The extent to which the country—

''(I) Applies transparent, nondiscriminatory, and competitive procedures in government procurement equivalent to those contained in the Agreement in Government Procurement described in section 101(d)(17) of the Uruguay Round Agreements Act; and

''(II) contributes to efforts in international fora to develop and implement international rules in transparency in government procurement.''

Countries Considered To Be Caribbean Basin Countries

The following countries are considered to be Caribbean Basin countries under the CBTPA:

Antigua and Barbuda
Aruba
Bahamas
Barbados
Belize
Costa Rica
Dominica
Dominican Republic
El Salvador
Grenada
Guatemala
Guyana
Haiti
Honduras
Jamaica
Montserrat
Netherlands Antilles
Nicaragua
Panama
St. Kitts and Nevis
Saint Lucia
Saint Vincent and the Grenadines
Trinidad and Tobago
British Virgin Islands

Submitting Written Comments

Interested parties are invited to submit comments regarding the eligibility of countries noted above for designation as CBTPA beneficiary countries. All submissions must include an original and twenty (20) copies in

English. All submissions should clearly identify on the cover page of the submission the country or countries and eligibility criterion or criteria discussed within the submission. All pages should be clearly numbered and include the name of the person and/or organization submitting the written comments. All submissions must be received no later than 5 p.m. on Monday, July 17, 2000,and should be addressed to Gloria Blue in Room 122, 600 17th Street, N.W., Washington, D.C. 20508. Public versions of all documents relating to this review will be available for inspection by appointment in the USTR public reading room. Appointments may be scheduled between 9 a.m. and noon and 1 p.m. and 4 p.m. by calling (202) Submissions that are granted ''business confidential'' status and other information submitted in confidence will not be available for public inspection. Business confidential information will be subject to the requirements of 15 CFR 2003.6. A justification as to why the information contained in the submission should be treated confidentially must be included in the submission. If a document contains such business confidential information, an original and twenty (20) copies of the business confidential versions of the document along with an original and twenty (20) copies of a non-confidential version must be submitted. The document that contains business confidential information should be clearly marked ''business confidential'' at the top and bottom of each page. The version that does not contain business confidential information (the public version) should also be clearly marked at the top and bottom of every page (either ''public version'' or ''non-confidential'').

Peter F. Allgeier,

Associate U.S. Trade Representative for the Western Hemisphere.

[FR Doc. 00–15407 Filed 6–16–00; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Receipt of Noise Compatibility Program Modification and Request for Review Sarasota-Bradenton International Airport, Sarasota, FL

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces that it is reviewing a proposed Noise Compatibility Program (NCP) Modification that was submitted for Sarasota-Bradenton International Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96–193) (hereafter referred to as ''the Act'') and 14 CFR Part 150 by the Sarasota Manatee Airport Authority (SMAA), Sarasota, Florida. This program modification proposes to review the NCP approved on October 9, 1997, to reflect new constructive dates for eligibility for three abatement measures offered to homeowners of eligible properties within the program boundaries. These new dates are the only changes to the approved NCP. This program modification was submitted subsequent to a determination by FAA that the associated existing noise exposure maps submitted under 14 CFR Part 150 for the Sarasota-Bradenton International Airport were in compliance with applicable requirements effective May 7, 1996, for the current conditions noise exposure map and June 5, 2000, for the future conditions (5-year) noise exposure map. The proposed noise compatibility program modification will be approved or disapproved on or before December 2, 2000.

EFFECTIVE DATE: The effective date of the start of FAA's review of the proposed noise compatibility program modification is June 5, 2000. The public comment period ends August 4, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. Tommy J. Pickering, Federal Aviation Administration, Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, Florida 32822–5024, (407) 812–6331, Extension 29. Comments on the proposed noise compatibility program modification should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA is reviewing a proposed noise compatibility program modification submitted for Sarasota-Bradenton International Airport which will be approved or disapproved on or before December 2, 2000. This notice also announces the availability of this program modification for public review and comment.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has formally received the noise compatibility program modification for Sarasota-Bradenton International Airport, effective on June 5, 2000. It was requested that the FAA review this material and that the modified noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a modification to an approved noise compatibility program under section 104(b) of the Act. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program modification. The formal review period, limited by law to a maximum of 180 days, will be completed on or before December 2, 2000.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR Part 150, Section 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program modification with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps and the proposed noise compatibility program modification are available for examination at the following locations:

Federal Aviation Administration, Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, Florida 32822–5024.

Sarasota Manatee Airport Authority, Sarasota-Bradenton International Airport, 6000 Airport Circle, Sarasota, FL 34243.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT:**

Issued in Orlando, Florida June 5, 2000.

John W. Reynolds Jr.,

Assistant Manager, Orlando Airport District Office.

[FR Doc. 00–15414 Filed 6–16–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application to Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Baton Rouge Metropolitan Airport, Baton Rouge, LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Baton Rouge Metropolitan Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before July 19, 2000.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate copies to the FAA at the following address: Mr. G. Thomas Wade, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–611, Fort Worth, Texas 76193–0611.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Anthony Marino, Manager of Baton Rouge Metropolitan Airport at the following address: Anthony Marino, Director of Aviation, Greater Baton Rouge Airport District, Suite 212, Ryan Terminal Building, Baton Rouge, LA 70807.

Air carriers and foreign air carriers may submit copies of the written comments previously provided to the Airport under Section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. G. Thomas Wade, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–611, Fort Worth, Texas 76193–0610, (817) 222–5613.

The application may be reviewed in person at this same location

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Baton Rouge Metropolitan Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On June 2, 2000 the FAA determined that the application to impose and use the revenue from a PFC submitted by the Airport was substantially complete within the requirements of § 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than September 29, 2000.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: August 1, 2016.

Proposed charge expiration date: January 1, 2022.

Total estimated PFC revenue: $6,504,390.

PFC application number: 00–05–C–00–BTR.

Brief description of proposed project(s):

Projects To Impose and Use PFC's

1. Construct and Realign Airport Access Road

2. Acquire six (6) Aircraft Loading Bridges

Proposed class or classes of air carriers to be exempted from collecting PFC's: FAR Part 135 on demand Air Taxi/Commercial Operator (ATCO) reporting on FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional airports office located at: Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–610, 2601 Meacham Blvd., Fort Worth, Texas 76137–4298.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at Baton Rouge Metropolitan Airport.

Issued in Fort Worth, Texas on June 5, 2000.

Naomi L. Saunders,

Manager, Airports Division.

[FR Doc. 00–15415 Filed 6–16–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Indexing the Annual Operating Revenues of Railroads

This Notice sets forth the annual inflation adjusting index numbers which are used to adjust gross annual operating revenues of railroads for classification purposes. This indexing methodology will insure that regulated carriers are classified based on real business expansion and not from the effects of inflation. Classification is important because it determines the extent of reporting for each carrier.

The railroad's inflation factors are based on the annual average Railroad's Freight Price Index. This index is developed by the Bureau of Labor Statistics (BLS). This index will be used to deflate revenues for comparison with established revenue thresholds.

The base year for railroads is 1991. The inflation index factors are presented as follows:

	Railroad freight index	
	Index	Deflator percent
1991	409.5	[1] 100.00
1992	411.8	99.45
1993	415.5	98.55
1994	418.8	97.70
1995	418.17	97.85
1996	417.46	98.02
1997	419.67	97.50
1998	424.54	96.38

	Railroad freight index	
	Index	Deflator percent
1999	423.01	96.72

[1] Ex Parte No. 492, *Montana Rail Link, Inc., and Wisconsin Central Ltd., Joint Petition For Rulemaking With Respect To 49 CFR 1201*, 8 I.C.C. 2d 625 (1992), raised the revenue classification level for Class I railroads from $50 million to $250 million (1991 dollars), effective for the reporting year beginning January 1, 1992. The Class II threshold was also revised to reflect a rebasing from $10 million (1978 dollars) to $20 million (1991 dollars).

DATES: Effective Date: January 1, 1999.

FOR FURTHER INFORMATION CONTACT: Scott Decker (202)–565–1531. (TDD for the hearing impaired: (202) 565–1695).

Decided: June 13, 2000.

By the Board: Vernon A. Williams,

Vernon A. Williams.

Secretary.

[FR Doc. 00–15386 Filed 6–16–00; 8:45 am]

BILLING CODE 4915–00–P

Corrections

Federal Register

Vol. 65, No. 118

Monday, June 19, 2000

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

45 CFR Parts 447 and 457

State Child Health; State Children's Health Insurance Program Allotments and Payments to States

Correction

In rule document 00–12879 beginning on page 33616 in the issue of Wednesday, May 24, 2000, make the following correction:

§457.218 [Corrected]

On page 33625, in the third column, in §457.218(c)(6), in the second line, before ''The'' add paragraph designation ''(i)''.

[FR Doc. C0–12879 Filed 6–16–00; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Establishment of Interagency Council on Biomedical Imaging in Oncology and Call for Requests to Present

Correction

In notice document 00–13026 beginning on page 33561 in the issue of Wednesday, May 24, 2000, make the following corrections:

1. On page 33561, the notice's subject is corrected to read as set forth above.

2. On the same page, in the second column, in the sixth line, the name and title of the *Contact Person:* should read ''Ellen G. Feigal, M.D.''.

[FR Doc. C0–13026 Filed 6–16–00; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Monday,

June 19, 2000

Part II

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants: Group I Polymers and Resins; and National Emission Standards for Hazardous Air Pollutants: Group IV Polymers and Resins; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–6585–7]

RIN 2060–AH47

National Emission Standards for Hazardous Air Pollutants: Group I Polymers and Resins; and National Emission Standards for Hazardous Air Pollutants: Group IV Polymers and Resins

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rules; amendments.

SUMMARY: On September 5, 1996 and September 12, 1996, the EPA promulgated national emission standards for hazardous air pollutants (NESHAP) for Group I Polymers and Resins and the NESHAP for Group IV Polymers and Resins, respectively. In November 1996, petitions for review of the September 1996 Polymers and Resins I and IV rules were filed in the U.S. Court of Appeals for the District of Columbia Circuit. The petitioners raised numerous technical issues and concerns with these rules. In addition, on January 17, 1997, amendments to the Synthetic Organic Chemical Manufacturing Industry NESHAP (*i.e.,* the Hazardous Organic NESHAP, or HON) were promulgated; the HON is heavily referenced by both of the Polymers and Resins I and IV NESHAP. On March 9, 1999, the EPA proposed amendments to the Polymers and Resins I and IV NESHAP to address the issues raised by the petitioners and to update the rules as necessitated by the HON amendments. This document takes final action on those proposed amendments.

EFFECTIVE DATE: June 19, 2000.

ADDRESSES: Docket number A–92–44 for the Group I Polymers and Resins NESHAP and Docket number A–92–45 for the Group IV Polymers and Resins NESHAP contain supporting information used in developing the standards. The dockets are located at the U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460 in Room M–1500, Waterside Mall (ground floor), and may be inspected from 8:30 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: For information concerning these final rule amendments, contact Mr. Robert Rosensteel, Organic Chemicals Group, Emission Standards Division (MD–13), Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5608, facsimile number (919) 541–3470, electronic mail address rosensteel.bob@epa.gov. For information concerning applicability and rule determinations, contact your State or local representative or the appropriate EPA Regional Office representatives.

SUPPLEMENTARY INFORMATION: Following is a listing of EPA Regional contacts.

EPA Regional Office Contacts

Director, Office of Environmental Stewardship
Attn: Air Compliance Clerk
U.S. EPA Region I, 1 Congress Street, Suite 1100 (SEA), Boston, MA 02114–2023, (617) 918–1740

Umesh Dholakia
U.S. EPA Region II, 290 Broadway Street, New York, NY 10007–1866, (212) 637–4023

Doreen Au
U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103, (215) 814–5471

Lee Page
U.S. EPA Region IV, 61 Forsyth Street, SW, Atlanta, GA 30303–3104, (404) 562–9131

Shaun Burke, IL/IN, (312) 353–5713

Joseph Cardile, MI/WI, (312) 353–2151

Erik Hardin, MN/OH, (312) 353–2402
U.S. EPA Region V, 77 West Jackson Boulevard, Chicago, IL 60604–3507

John Jones
U.S. EPA Region VI, 1445 Ross Avenue, Suite 1200 (6EN–AT), Dallas, TX 75202, (214) 665–7233

Gary Schlicht
U.S. EPA Region VII, 726 Minnesota Avenue, Kansas City, KS 66101, (913) 551–7097

Tami Thomas-Burton
U.S. EPA Region VIII, 999 18th Street, Suite 500, Denver, CO 80202, (303) 312–6581

Ken Bigos
U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105, (415) 744–1240

Dan Meyer
U.S. EPA Region X, 1200 Sixth Street, Seattle, WA 98101, (206) 553–4150

Docket. The docket is an organized and complete file of all the information considered by the EPA in the development of this rulemaking. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket will serve as the record in the case of judicial review. (See section 307(d)(7)(A) of the Clean Air Act (CAA).) An index for each docket, as well as individual items contained within the dockets, may be obtained by calling (202) 260–7548 or (202) 260–7549. Alternatively, docket indexes are available by facsimile, as described on the Office of Air and Radiation, Docket and Information Center Website at http://www.epa.gov/oar/docket. A reasonable fee may be charged for copying docket materials.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of this final rule will be available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of the rule will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Regulated Entities. The regulated category and entities affected by this action include:

Category	Standard Industrial Classification (SIC) Codes	(NAICS)	Examples of regulated entities
Industry	2821, 2822	325211, 325212	Butyl Rubber, Halobutyl Rubber, Epichlorohydrin Elastomer, Ethylene Propylene Rubber, Hypalon™, Neoprene, Nitrile Butadiene Rubber, Nitrile Butadiene Latex, Polybutadiene Rubber, Styrene-Butadiene Rubber or Latex, Acrylonitrile Butadiene Styrene Resin, Styrene Acrylonitrile Resin, Methyl Methacrylate Acrylonitrile Butadiene Styrene Resin, Methyl Methacrylate Butadiene Styrene Resin, Poly(ethylene terephthalate) Resin, Polystyrene Resin, and Nitrile Resin producers.

This table is not intended to be exhaustive, but rather provides a guide for readers likely to be interested in the revisions to the regulations affected by this action. To determine whether your facility is regulated by this action, you should carefully examine all of the applicability criteria in § 63.480 of the Polymers and Resins I rule and § 63.1310 of the Polymers and Resins IV rule. If you have any questions regarding the applicability of these amendments to a particular entity, consult your State or local representative or the appropriate EPA Regional Office representatives listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Judicial Review. Amendments to Polymers and Resins I and IV NESHAP were proposed on March 9, 1999 (64 FR 11560). This action announces the EPA's final decisions on the rules. Under section 307(b)(1) of the CAA, judicial review of final rules is available by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit August 18, 2000. Under section 307(b)(2) of CAA, the requirements that are the subject of these final amendments may not be challenged later in civil or criminal proceedings brought by the EPA to enforce these requirements.

Outline. The information presented in this preamble is organized as follows:

I. What is the background of these rules?
II. What types of public comments were received on the March 9, 1999 proposal?
III. What major issues were raised in the public comments and what changes were made for the final amendments?
A. Compliance Dates
B. Flexible Operation Unit Applicability Provisions
C. Definitions
D. Additions to Existing Affected Sources
E. Halogenated Batch Process Vents
F. PET and Polystyrene Continuous Process Vents
G. Start-up, Shutdown, and Malfunction and Periods of Nonoperation
H. Organic HAP Lists
I. Other Clarifications
IV. What are the administrative requirements for these final amendments?
A. Executive Order 12866
B. Executive Order 13132
C. Executive Order 13084
D. Executive Order 13045
E. Unfunded Mandates Reform Act
F. Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*
G. Paperwork Reduction Act
H. National Technology Transfer and Advancement Act
I. Congressional Review Act

I. What is the Background of These Rules?

On September 5, 1996 (61 FR 46906) and September 12, 1996 (61 FR 48208), we issued NESHAP for Group I Polymers and Resins (40 CFR part 63, subpart U) and Group IV Polymers and Resins (40 CFR part 63, subpart JJJ), respectively. On August 26, 1996 (61 FR 43698), prior to the promulgation of subparts U and JJJ, we proposed amendments to the HON, which subparts U and JJJ both reference. Subparts U and JJJ were modeled after the HON due to similarities in emission characteristics and emission controls at HON and Polymers and Resins affected sources.

On November 4, 1996, the Dow Chemical Company (Dow) filed petitions for review of the promulgated Polymers and Resins I and IV NESHAP in the U.S. Court of Appeals for the District of Columbia Circuit, *The Dow Chemical Company* v. *EPA,* 96–1417 and 96–1421 (D.C. Cir.). Dow raised over 280 technical issues on the rules' structure and applicability, including questions about the applicability of the HON amendments to subparts U and JJJ. Dow raised issues regarding details of the technical requirements, drafting clarity, and structural errors in the drafting of certain sections of the rules. On October 30, 1996, the Union Carbide Corporation filed a petition for review of the promulgated Polymers and Resins I NESHAP in the U.S. Court of Appeals for the District of Columbia Circuit, *Union Carbide Corporation* v. *EPA,* 96–1413 and Consolidated Cases (D.C. Cir.).

On March 9, 1999 (64 FR 11561), we proposed amendments to subparts U and JJJ to incorporate the concepts and new references related to the promulgated HON amendments and to propose changes pursuant to settlements reached with industry. In this action, we are promulgating the amendments proposed on March 9, 1999.

In addition to these final amendments to subparts U and JJJ, other actions taken to amend various aspects of subparts U and JJJ since the original promulgation of these rules in September of 1996 include the following **Federal Register** notices: January 14, 1997 (62 FR 1835), equipment leaks compliance date extension for both rules; June 6, 1997 (62 FR 30993), equipment leaks compliance date extension for poly(ethylene terephthalate) (PET) resin affected sources; July 15, 1997 (62 FR 37720), minor corrections and clarifications to the rules; February 27, 1998 (63 FR 9944), change in the effective date of the rule for subpart JJJ to February 27, 1998; March 31, 1998 (63 FR 15312), a temporary compliance extension until February 27, 2001 for existing affected sources producing PET using the continuous terephthalic acid (TPA) high viscosity multiple end finisher process; December 9, 1998 (63 FR 67879), notification of a proposed partial settlement; March 9, 1999 (64 FR 11536), clarifications and corrections to the promulgated rules; May 7, 1999 (64 FR 24511), withdrawal, as a result of adverse comments, of one amendment from the amendments in the March 9, 1999 direct final rule; June 8, 1999 (64 FR 30406), equipment leaks compliance date extension for new and existing affected sources producing PET; June 8, 1999 (64 FR 30456), proposed denial of petition for reconsideration of the equipment leak requirements in subpart JJJ; and June 30, 1999 (64 FR 35023), indefinite stay of the compliance dates for certain provisions under subparts U and JJJ.

II. What Types of Public Comments Were Received on the March 9, 1999 Proposal?

We received six public comment letters on the March 9, 1999 proposed amendments. All comment letters were from industry representatives. The comment letters generally supported the proposed amendments, but also suggested clarifications and corrections to the proposed amendments. We considered these comments and, where appropriate, made changes to the proposed amendments. This preamble summarizes significant issues raised and the changes to the proposed amendments. Our response to all comments can be found in National Emission Standards for Hazardous Air Pollutants for Polymers and Resins (Groups I and IV): Summary of Public Comments and Responses on Proposed Amendments, EPA–453/R–99–001. This document may be found in both dockets.

III. What Major Issues Were Raised in the Public Comments and What Changes Were Made for the Final Amendments?

As noted above, these final amendments incorporate the concepts and new references in response to the promulgated HON amendments and include changes related to settlement negotiations with industry. In addition to a number of clarifications and reference changes, the amendments include changes to the applicability provisions for flexible operation units, the batch process vent group determination procedures, and the reporting and recordkeeping requirements. We believe that these

changes provide additional clarity to the rules. In the preamble to the March 9, 1999 proposed amendments, we provided a detailed explanation of the proposed amendments. The following discussion summarizes the major public comments on the proposed amendments and significant changes made in response to these comments.

A. Compliance Dates

Due to the extensive nature of the proposed amendments and the proximity of the proposed amendments to the September 1999 compliance dates (September 5 for subpart U and September 12 for subpart JJJ), several commenters requested an extension of the compliance dates for existing sources. They indicated that due to the proposed amendments, they would have to re-evaluate applicability, compliance status, and the basis for demonstrating compliance. As discussed in the preamble to the proposed amendments (64 FR 11573), we were aware of the possibility that specific proposed amendments might affect the compliance status of one or more facilities. We specifically requested comments on this issue, along with specific examples of the proposed rule changes that could cause a facility to be out of compliance.

After review of the comments submitted in response to that request and the specific proposed rule examples provided, we decided that setting a new compliance date for the amended rule was warranted. Therefore, on June 30, 1999, we published a direct final rule in the **Federal Register** (64 FR 35023) which stayed certain compliance dates ''indefinitely.'' That stay was effective August 30, 1999. Specifically, that action stayed the existing source compliance dates for storage vessels, process vents, back-end process operations (subpart U only), heat exchange systems, and wastewater. That stay did not impact the equipment leaks at any facility or the process contact cooling tower provisions at facilities that produce PET using a continuous terephthalic acid high viscosity multiple end finisher process. That action also stayed the compliance date for all emission sources at new affected sources that had an initial start-up date on or after March 9, 1999.

In the June 30, 1999 **Federal Register** document, we indicated that we would publish new compliance dates, which would provide a reasonable amount of time in which to comply with the amended regulations, when we promulgated the final amendments to the regulations. As pointed out by the commenters, many of the proposed rule changes that may affect compliance are related to the provisions that are used to determine whether controls are required for a particular emission point. In addition, we recognized that a change in compliance date also affects certain reports that the promulgated rules required to be submitted prior to the compliance date (discussed below). One commenter suggested a compliance date of at least 9 months after promulgation of the amendments. However, we did not believe that 9 months was a sufficient time period to allow for (1) the re-evaluation of whether controls are required by the owner or operator, (2) the submission of reports that are due prior to the compliance date, and (3) the review of these reports by the Administrator. We concluded that 1 year was a reasonable amount of time for accomplishment of these activities.

Therefore, the final amendments require that existing affected sources comply with the nonequipment leak requirements by June 19, 2001. The final amendments also require, in accordance with the CAA, that all new affected sources comply with the amended regulations on June 19, 2000, or at initial start-up, whichever is later. Note: New affected sources that produce PET as their primary product are not required to comply with the equipment leak provisions in § 63.1331 until February 27, 2001 or at initial start-up, whichever is later.

The promulgated rules require the owner or operator to submit two reports, the precompliance report and the emissions averaging plan (if applicable), prior to the compliance date. The promulgated rules originally required the owner or operator to submit these reports prior to the publication of the proposed amendments on March 9, 1999. We believe that facilities should have the opportunity to submit, or resubmit, these reports after evaluating the final amendments. Therefore, the final amendments change the required submission date of the emissions averaging plan to September 19, 2000 (9 months before the compliance date) and the due date of the precompliance report to December 19, 2000 (6 months before the compliance date). Even if a facility does not need to make changes to an emissions averaging plan or precompliance report previously submitted, the facility must either resubmit the plan or report, or submit a notification that the previously submitted plan or report is still valid. This will avoid any confusion regarding your intention.

In another compliance date issue, a commenter requested that the EPA change the compliance date for new emission points and newly created Group 1 emission points to 120 days after the initial start-up, rather than the proposed requirement that such points be in compliance at initial start-up. Upon consideration of the comments, we agree that time may be necessary to evaluate the actual impact of a process change after initial start-up in some instances. Therefore, the final rule requires that new emission points and newly created Group 1 emission points be in compliance with the existing source requirements within 120 days of initial start-up.

B. Flexible Operation Unit Applicability Provisions

The promulgated rules specify that the owner or operator must redetermine the primary product of a flexible operation unit (based on actual previous production) whenever changes in products occur that could reasonably be expected to change the primary product. If the primary product indeed changes, then the process unit would no longer be subject to subpart U or JJJ if the new primary product makes the process unit subject to another subpart of 40 CFR part 63 (*i.e.,* another maximum achievable control technology (MACT) standard). If the new primary product does not make the process unit subject to another MACT standard, then the process unit must continue to comply with subpart U or JJJ, provided that the production of elastomer/thermoplastic continues. One commenter objected to the idea that the owner or operator of an elastomer product process unit (EPPU) or thermoplastic product process unit (TPPU) that has been operating as a flexible operation unit must continue to comply with subpart U or JJJ, even when an elastomer/thermoplastic product is no longer the primary product of the flexible operation unit.

If we had incorporated the commenter's suggestion, a major source could have continued to produce a product covered by a MACT standard (*i.e.,* an elastomer or thermoplastic) and emit hazardous air pollutants (HAP) but not be subject to any requirements to reduce those HAP emissions. Therefore, controls used to reduce HAP might be removed. We believe that such a situation is contrary to the intent of section 112 of the CAA; therefore, we did not change the final rule in response to this comment.

We did make a clarification to the proposed flexible operation unit applicability provisions with regard to annual redeterminations. This change clarifies that annual applicability determinations are not required for flexible operation units in which the

owner or operator does not intend to produce elastomer/thermoplastic in the future.

C. Definitions

We revised several proposed definitions in response to comments. The proposed addition of a definition of *net positive heating value* was an attempt to provide additional clarification to the definition of *recovery device,* which uses the term *net positive heating value.* After review of the comments, we concluded that a single all-inclusive definition that works for this term was not possible, and we removed the entire term from the final amendments. Therefore, you must be able to demonstrate, in engineering terms appropriate to each individual situation, that a recovered stream has net positive heating value.

A commenter pointed out that the proposed definition of *supplemental combustion air* could be interpreted to require application of the oxygen correction factor when a facility adds air to exhaust streams controlled by catalytic oxidizers to ensure proper operation and to prevent damage to the catalyst bed. We agree a facility should not consider air added to ensure proper operation and to avoid damage to a catalytic oxidizer to be *supplemental combustion air;* therefore, the definition of *supplemental combustion air* in the final amendments includes an additional sentence clarifying this point.

We agree with a commenter that the proposed definition of *stripping* in subpart U used language that excluded certain operations, specifically drum dryers which have devolatilization as their primary purpose. Therefore, the final definition of *stripping* clarifies that processes that occur in dryers with the primary purpose of devolatilization are considered to be stripping.

We also agree with commenters that the proposed change to the definition of *elastomer product* in subpart U, which separated polybutadiene rubber by solution and styrene butadiene rubber by solution into two different products, was not appropriate. At the majority of facilities, these two polymers are produced in the same process. Further, in the solution process that is used at these facilities, the HAP emissions are primarily from the use of the solvent, not the reactants, which means that there is little difference in emissions between the two products. In fact, total HAP emissions were usually reported for the entire facility and not for the individual products, so we originally developed the back-end process operation limitations based on the emissions from both of these polymers. Therefore, we recombined these polymers as a single elastomer product in the final amendments.

Changes were also made to the definition of *material* recovery section in subpart JJJ to clarify that contact and non-contact condensers removing ethylene glycol from vapor streams coming out of polymerization vessels are part of the polymerization reaction section.

D. Additions to Existing Affected Sources

The proposed definition of *reconstruction* and the proposed provisions that applied the definition of *reconstruction* (§§ 63.480(i)(2)(i) and 63.1310(i)(2)(i)) were inconsistent. To summarize, the proposed §§ 63.480(i)(2)(i) and 63.1310(i)(2)(i) stated that if a facility made any process change or addition that met the definition of reconstruction after June 5, 1995 (June 12, 1995 for subpart JJJ), the source is a new affected source. However, the proposed definition of *reconstruction* in §§ 63.482 and 63.1312 only addressed the *replacement*, and not the *addition*, of components. One commenter suggested that we amend the definition of *reconstruction* to also include additions.

The general provisions for part 63 clearly separate replacements from additions. The definition of *reconstruction* in the general provisions only addresses the *replacement* of components, while § 63.5(b)(6) of the general provisions addresses additions. In the proposed language for §§ 63.480(i)(2)(i) and 63.1310(i)(2)(i), we combined these two concepts, thus creating confusion and making them inconsistent with our policies regarding replacements and additions. Therefore, rather than amend the definition of *reconstruction* in §§ 63.482 and 63.1312, we revised the provisions in §§ 63.480(i)(2) and 63.1312(i)(2) to clearly distinguish how a facility is to handle replacements of components and additions. In summary, if the replacement of components at an existing affected source meets the definition of *reconstruction*, then the affected source becomes a new affected source. If an owner or operator makes an addition to an existing affected source, then the addition becomes part of the existing affected source.

E. Halogenated Batch Process Vents

The purpose of the halogenated vent provisions is to reduce the hydrogen halides that are created when halogenated organic compounds are routed to a combustion device. Therefore, the important location for determining whether a vent stream is halogenated is prior to the stream entering a combustion device. The location specified in both subparts U and JJJ for making batch vent group determinations is at the exit of the batch unit operation (*i.e.*, before any recovery, recapture, or combustion device). Therefore, any reduction in the mass emission rate of halogen atoms that occurs in a recovery or recapture device would not be taken into account. A commenter requested that the rules allow the determination of the concentration of each organic compound containing halogen atoms at the recovery device or process discharge for the purposes of determining the halogenated status of a vent stream. We agree with the commenter. We have changed the rules to specify that an owner or operator must determine the concentration of each organic compound containing halogen atoms at the exit of the last recovery or recapture device.

F. PET and Polystyrene Continuous Process Vents

Continuous process vents at PET and polystyrene affected sources are subject to emission limitations that apply to all process vents in entire sections (*i.e.*, material recovery section, polymerization reaction section) of the process unit. This differs from the requirements for other continuous process vents which are subject to control requirements based on the group status of individual process vents.

One commenter requested that the rule exempt process vents at PET and polystyrene affected sources subject to these section-specific emission limitations from certain control, testing, and recordkeeping requirements if they meet the Group 2 criteria. However, since the concept of group status does not apply for these process vents, we did not make changes in response to these comments. We believe that the emission limitations for process vents in the applicable sections, which were determined to be the MACT floor for the applicable subcategories, provide an owner or operator with various compliance demonstration options, including a kilogram of HAP per megagram of product limit, which allow the owner or operator to choose which process vents to control.

Paragraph § 63.1313(b) of subpart JJJ addresses the control of combined streams. One commenter believed that these provisions do not adequately address how to handle process vents in sections of PET and polystyrene facilities that are subject to the requirements in §§ 63.1316 through

63.1320 and other combined streams that do not include Group 1 emission streams. The commenter suggests using the Total Resource Effectiveness (TRE) value to determine applicability for this combined vent stream, and if the combined stream does not meet the Group 1 criteria, no control would be required.

If a combined emission stream has no Group 1 emission streams, the combined emission stream could either (1) have no emission streams requiring control, or (2) have process vent emission streams subject to §§ 63.1316 through 63.1320. For the first case, there is no reason for an owner or operator to evaluate the combined emission stream for control. For the second case, consider the following example. A facility makes polystyrene using a continuous process so emissions from the material recovery section must be controlled in accordance with § 63.1316(c). If a stream from the material recovery section is combined with emission streams that are not required to be controlled (*i.e.*, Group 2 emission streams), and the TRE of the combined stream does not meet the Group 1 criteria, then no control would be required if we adopted the commenter's suggested approach of applying the TRE to these combined streams. The result would be that emissions that are required to be controlled under § 63.1316(c) would not be controlled. This approach would result in a situation where the control requirements of §§ 63.1316 through 63.1320 could be circumvented by combining subject streams with other streams that are not required to be controlled. Therefore, we believe that the provisions in § 63.1313(b) adequately address the situations raised by the commenter, and we did not change the rule in response to this comment.

G. Start-up, Shutdown, and Malfunction and Periods of Nonoperation

We received several comments on the provisions related to the requirements during start-up, shutdown, and malfunction and during periods of nonoperation. As a result of these comments, we made the following changes. The promulgated rules require that owners and operators implement measures to prevent or minimize excess emissions during periods of start-up, shutdown, and malfunction. One commenter suggested changes to the definition of excess emissions with which we agreed. Therefore, in the final rule, we have defined excess emissions as ''emissions greater than those allowed by the emissions limitation which would apply during operational periods other than start-up, shutdown, and malfunction.'' Commenters also made suggestions related to the records required during periods of start-up, shutdown, and malfunction. In response to these comments, we reduced the amount of information required to be submitted with reports of start-ups, shutdowns, and malfunctions to the level specified by the 40 CFR part 63 general provisions. Finally, we revised Table 1 of both promulgated rules to clarify that immediate start-up, shutdown, and malfunction reports are not required.

H. Organic HAP Lists

As a result of comments, we revised the tables specifying known HAP emitted from the production of specific elastomer/thermoplastic products (Table 5 in subpart U and Table 6 in subpart JJJ). Specifically, Table 5 in subpart U no longer identifies hexane, toluene, and xylenes as known organic HAP emitted from the production of styrene butadiene rubber by emulsion and styrene butadiene latex elastomer. We have no information that indicates that these HAP are used or emitted from the production of these elastomer products, but they were inadvertently identified in the table as known organic HAP emitted from their production. Carbon disulfide is a HAP known to be emitted during the production of styrene butadiene rubber via an emulsion process, so we added carbon disulfide to the table and indicated that it is a known organic HAP emitted from the production of styrene butadiene rubber by emulsion. Also, Table 6 of subpart JJJ no longer identifies 1,3-butadiene as a known organic HAP emitted from the production of actrylonitrile styrene acrylate resin/alpha methyl styrene acrylonitrile resin (ASA/AMSAN), as we have no information that indicates ASA/AMSAN production processes use or emit this HAP.

I. Other Clarifications

A change was made to clarify that process units that produce elastomers which are, in turn, used at least 50 percent of the time to produce thermoplastics, are subject to subpart JJJ and not subpart U. Another change clarifies that changes that do not alter the equipment configuration and operation conditions are not process changes, and that these configurations and conditions are not required to be documented in the Notification of Compliance Status reports. We made changes to clarify the organic HAP subject to the process and maintenance wastewater requirements. In subpart U, we made a change to clarify the elastomer products that are not subject to back-end process operation residual HAP limitations. We also clarified the monitoring requirements for flares used to control process back-end HAP emissions.

IV. What Are the Administrative Requirements for These Final Amendments?

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must determine whether the regulatory action is ''significant'' and therefore subject to the Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive 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, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities;

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

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

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

Pursuant to the terms of Executive Order 12866, it has been determined that these amendments are not a ''significant regulatory action'' because they do not meet any of the above criteria. Consequently, these amendments were not submitted to OMB for review under Executive Order 12866.

B. Executive Order 13132

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that 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.'' Under section 6 of Executive Order 13132, EPA

may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the regulation.

These amendments do not have federalism implications. They 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, as specified in Executive Order 13132. Thus, the requirements of section 6 of Executive Order 13084 do not apply to these amendments.

C. 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 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.'' These rules do not significantly or uniquely affect the communities of Indian tribal governments. No tribal governments own or operate an affected source. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to these amendments.

D. Executive Order 13045

Executive Order 13045 (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that the EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. These rules fall into that category only in part: the minimum rule stringency for subparts U and JJJ is set according to a congressionally-mandated, technology-based lower limit called the ''floor,'' while a decision to increase the stringency beyond this floor can be based on risk considerations. Thus, Executive Order 13045 applies to these rules only to the extent that the Agency may consider the inherent toxicity of a regulated pollutant, and any differential impact such a pollutant may have on children's health, in deciding whether to adopt control requirements more stringent than the floor level.

These amendments are not subject to Executive Order 13045 because they are not economically significant as defined in Executive Order 12866. No children's risk analysis was performed for these amendments because no alternative technologies exist that would provide greater stringency at a reasonable cost. Therefore, the results of any such analysis would have no impact on the stringency decision.

E. 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, the 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 by the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires the EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least-burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the EPA to adopt an alternative other than the least-costly, most cost-effective, or least-burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that these amendments do not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or in the private sector in any 1 year. Thus, today's amendments are not subject to the requirements of sections 202 and 205 of the UMRA. In addition, the EPA has determined that these amendments contain no regulatory requirements that might significantly or uniquely affect small governments, because they contain no requirements that apply to such governments or impose obligations on them. Therefore, today's amendments are not subject to the requirements of section 203 of the UMRA.

F. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of a rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute 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 organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of these amendments on small entities, small entity is defined as: (1) A small business that has less than 750 employees and is unaffiliated with a larger domestic entity; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of these amendments on small entities, we have concluded that these actions will not have a significant economic impact on a substantial number of small entities, because they include primarily clarifications and amendments to reduce the reporting and recordkeeping burden, thus they impose no additional regulatory requirements on owners or operators of affected sources.

G. Paperwork Reduction Act

For both the Group I and Group IV Polymers and Resins NESHAP, the information collection requirements (ICRs) were submitted to OMB under the Paperwork Reduction Act. At promulgation, OMB had already approved the ICR for the Group IV Polymers and Resins NESHAP and assigned OMB control number 2060–0351. Subsequently, OMB approved the ICR for the Group I Polymers and Resins NESHAP, and on July 15, 1997 (62 FR 37720) assigned OMB control number 2060–0356.

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. The EPA has amended 40 CFR 9.1 to indicate the ICRs contained in the Group I and IV Polymers and Resins NESHAP.

The amendments to the NESHAP contained in this final rule should have no impact on the information collection burden estimates made previously. Therefore, the ICRs have not been revised.

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, (15 U.S.C. 272 note), directs all Federal agencies to use voluntary consensus standards instead of government-unique standards in their regulatory activities unless to do so would be inconsistent with applicable law or would be otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* material specifications, test method, sampling and analytical procedures, business practices, etc.) that are developed or adopted by one or more voluntary consensus standards bodies. Examples of organizations generally regarded as voluntary consensus standards bodies include the American Society for Testing and Materials (ASTM), the National Fire Protection Association (NFPA), and the Society of Automotive Engineers (SAE). The NTTAA requires Federal agencies like EPA to provide Congress, through OMB, with explanations when the Agency decides not to use available and applicable voluntary consensus standards.

During the rulemaking, the Agency searched for voluntary consensus standards that might be applicable. The search has identified no applicable voluntary standards. Accordingly, the NTTAA requirement to use applicable voluntary consensus standards does not apply to these amendments.

I. The 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. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective June 19, 2000.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: April 20, 2000.

Carol M. Browner,

Administrator.

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

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

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

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

Subpart U—National Emission Standards for Hazardous Air Pollutant Emissions: Group I Polymers and Resins

2. Section 63.480 is amended by:

a. Revising paragraph (a);

b. Revising paragraph (b);

c. Revising paragraph (c);

d. Revising paragraph (d);

e. Revising paragraph (e);

f. Revising paragraph (f);

g. Revising paragraph (g) introductory text;

h. Revising paragraphs (g)(1) through (g)(4);

i. Revising paragraphs (g)(6), through (g)(8);

j. Revising paragraph (h) introductory text;

k. Revising paragraphs (h)(1) through (h)(4);

l. Revising paragraphs (h)(6) and (h)(7);

m. Revising paragraph (i) introductory text;

n. Revising paragraph (i)(1) introductory text;

o. Revising paragraphs (i)(1)(i) and (i)(1)(ii);

p. Revising paragraph (i)(2)(i) introductory text;

q. Revising paragraph (i)(2)(i)(A);

r. Revising paragraphs (i)(2)(ii) and (i)(2)(iii);

s. Revising paragraphs (i)(3) through (i)(5);

t. Revising paragraph (j); and

u. Adding paragraph (i)(6).

The revisions and additions read as follows:

§ 63.480 Applicability and designation of affected sources.

(a) *Definition of affected source.* The provisions of this subpart apply to each affected source. Affected sources are described in paragraphs (a)(1) through (a)(4) of this section.

(1) An affected source is either an existing affected source or a new affected source. Existing affected source

is defined in paragraph (a)(2) of this section, and new affected source is defined in paragraph (a)(3) of this section.

(2) An existing affected source is defined as each group of one or more elastomer product process units (EPPU) and associated equipment, as listed in paragraph (a)(4) of this section, that is not part of a new affected source, as defined in paragraph (a)(3) of this section, that is manufacturing the same primary product and that is located at a plant site that is a major source.

(3) A new affected source is defined by the criteria in paragraph (a)(3)(i), (a)(3)(ii), or (a)(3)(iii) of this section. The situation described in paragraph (a)(3)(i) of this section is distinct from those situations described in paragraphs (a)(3)(ii) and (a)(3)(iii) of this section and from any situation described in paragraph (i) of this section.

(i) At a site without HAP emission points before June 12, 1995 (*i.e.,* a ''greenfield'' site), each group of one or more EPPU and associated equipment, as listed in paragraph (a)(4) of this section, that is manufacturing the same primary product and that is part of a major source on which construction commenced after June 12, 1995;

(ii) A group of one or more EPPU meeting the criteria in paragraph (i)(1)(i) of this section; or

(iii) A reconstructed affected source meeting the criteria in paragraph (i)(2)(i) of this section.

(4) *Emission points and equipment.* The affected source also includes the emission points and equipment specified in paragraphs (a)(4)(i) through (a)(4)(iv) of this section that are associated with each applicable group of one or more EPPU constituting an affected source.

(i) Each waste management unit.

(ii) Maintenance wastewater.

(iii) Each heat exchange system.

(iv) Equipment required by, or utilized as a method of compliance with, this subpart which may include control devices and recovery devices.

(5) EPPUs and associated equipment, as listed in paragraph (a)(4) of this section, that are located at plant sites that are not major sources are neither affected sources nor part of an affected source.

(b) *EPPUs without organic HAP.* The owner or operator of an EPPU that is part of an affected source, as defined in paragraph (a) of this section, but that does not use or manufacture any organic HAP shall comply with the requirements of either paragraph (b)(1) or (b)(2) of this section. Such an EPPU is not subject to any other provision of this subpart and is not required to comply with the provisions of subpart A of this part.

(1) Retain information, data, and analyses used to document the basis for the determination that the EPPU does not use or manufacture any organic HAP. Types of information that could document this determination include, but are not limited to, records of chemicals purchased for the process, analyses of process stream composition, engineering calculations, or process knowledge.

(2) When requested by the Administrator, demonstrate that the EPPU does not use or manufacture any organic HAP.

(c) *Emission points not subject to the provisions of this subpart.* The affected source includes the emission points listed in paragraphs (c)(1) through (c)(9) of this section, but these emission points are not subject to the requirements of this subpart or to the provisions of subpart A of this part.

(1) Equipment that does not contain organic HAP and is located at an EPPU that is part of an affected source;

(2) Stormwater from segregated sewers;

(3) Water from fire-fighting and deluge systems in segregated sewers;

(4) Spills;

(5) Water from safety showers;

(6) Water from testing of deluge systems;

(7) Water from testing of firefighting systems;

(8) Vessels and equipment storing and/or handling material that contains no organic HAP or organic HAP as impurities only; and

(9) Equipment that is intended to operate in organic HAP service for less than 300 hours during the calendar year.

(d) *Processes exempted from the affected source.* Research and development facilities are exempted from the affected source.

(e) *Applicability determination of elastomer equipment included in a process unit producing a non-elastomer product.* If an elastomer product that is subject to this subpart is produced within a process unit that is subject to subpart JJJ of this part, and at least 50 percent of the elastomer is used in the production of the product manufactured by the subpart JJJ process unit, the unit operations involved in the production of the elastomer are considered part of the process unit that is subject to subpart JJJ, and not this subpart.

(f) *Primary product determination and applicability.* An owner or operator of a process unit that produces or plans to produce an elastomer product shall determine if the process unit is subject to this subpart in accordance with this paragraph. The owner or operator shall initially determine whether a process unit is designated as an EPPU and subject to the provisions of this subpart in accordance with either paragraph (f)(1) or (f)(2) of this section. The owner or operator of a flexible operation unit that was not initially designated as an EPPU, but in which an elastomer product is produced, shall conduct an annual re-determination of the applicability of this subpart in accordance with paragraph (f)(3) of this section. Owners or operators that anticipate the production of an elastomer product in a process unit that was not initially designated as an EPPU, and in which no elastomer products are currently produced, shall determine if the process unit is subject to this subpart in accordance with paragraph (f)(4) of this section. Paragraphs (f)(3) and (f)(5) through (f)(7) of this section discuss compliance only for flexible operation units. Other paragraphs apply to all process units, including flexible operation units, unless otherwise noted. Paragraph (f)(8) of this section contains reporting requirements associated with the applicability determinations. Paragraphs (f)(9) and (f)(10) describe criteria for removing the EPPU designation from a process unit.

(1) *Initial determination.* The owner or operator shall initially determine if a process unit is subject to the provisions of this subpart based on the primary product of the process unit in accordance with paragraphs (f)(1)(i) through (iii) of this section. If the process unit never uses or manufactures any organic HAP, regardless of the outcome of the primary product determination, the only requirements of this subpart that might apply to the process unit are contained in paragraph (b) of this section. If a flexible operation unit does not use or manufacture any organic HAP during the manufacture of one or more products, paragraph (f)(5)(i) of this section applies to that flexible operation unit.

(i) If a process unit only manufactures one product, then that product shall represent the primary product of the process unit.

(ii) If a process unit produces more than one intended product at the same time, the primary product shall be determined in accordance with paragraph (f)(1)(ii)(A) or (B) of this section.

(A) The product for which the process unit has the greatest annual design capacity on a mass basis shall represent the primary product of the process unit, or

(B) If a process unit has the same maximum annual design capacity on a

mass basis for two or more products, and if one of those products is an elastomer product, then the elastomer product shall represent the primary product of the process unit.

(iii) If a process unit is designed and operated as a flexible operation unit, the primary product shall be determined as specified in paragraphs (f)(1)(iii)(A) or (B) of this section based on the anticipated operations for the 5 years following September 5, 1996 at existing process units, or for the first year after the process unit begins production of any product for new process units. If operations cannot be anticipated sufficiently to allow the determination of the primary product for the specified period, applicability shall be determined in accordance with paragraph (f)(2) of this section.

(A) If the flexible operation unit will manufacture one product for the greatest operating time over the specified five year period for existing process units, or the specified one year period for new process units, then that product shall represent the primary product of the flexible operation unit.

(B) If the flexible operation unit will manufacture multiple products equally based on operating time, then the product with the greatest expected production on a mass basis over the specified five year period for existing process units, or the specified one year period for new process units shall represent the primary product of the flexible operation unit.

(iv) If, according to paragraph (f)(1)(i), (ii), or (iii) of this section, the primary product of a process unit is an elastomer product, then that process unit shall be designated as an EPPU. That EPPU and associated equipment, as listed in paragraph (a)(4) of this section, is either an affected source, or part of an affected source comprised of other EPPU and associated equipment, as listed in paragraph (a)(4) of this section, subject to this subpart with the same primary product at the same plant site that is a major source. If the primary product of a process unit is determined to be a product that is not an elastomer product, then that process unit is not an EPPU.

(2) If the primary product cannot be determined for a flexible operation unit in accordance with paragraph (f)(1)(iii) of this section, applicability shall be determined in accordance with this paragraph.

(i) If the owner or operator cannot determine the primary product in accordance with paragraph (f)(1)(iii) of this section, but can determine that an elastomer product is not the primary product, then that flexible operation unit is not an EPPU.

(ii) If the owner or operator cannot determine the primary product in accordance with paragraph (f)(1)(iii) of this section, and cannot determine that an elastomer product is not the primary product as specified in paragraph (f)(2)(i) of this section, applicability shall be determined in accordance with paragraph (f)(2)(ii)(A) or (f)(2)(ii)(B) of this section.

(A) If the flexible operation unit is an existing process unit, the flexible operation unit shall be designated as an EPPU if an elastomer product was produced for 5 percent or greater of the total operating time of the flexible operation unit since March 9, 1999. That EPPU and associated equipment, as listed in paragraph (a)(4) of this section, is either an affected source, or part of an affected source comprised of other EPPU and associated equipment, as listed in paragraph (a)(4) of this section, subject to this subpart with the same primary product at the same plant site that is a major source. For a flexible operation unit that is designated as an EPPU in accordance with this paragraph, the elastomer product produced for the greatest amount of time since March 9, 1999 shall be designated as the primary product of the EPPU.

(B) If the flexible operation unit is a new process unit, the flexible operation unit shall be designated as an EPPU if the owner or operator anticipates that an elastomer product will be manufactured in the flexible operation unit at any time in the first year after the date the unit begins production of any product. That EPPU and associated equipment, as listed in paragraph (a)(4) of this section, is either an affected source, or part of an affected source comprised of other EPPU and associated equipment, as listed in paragraph (a)(4) of this section, subject to this subpart with the same primary product at the same plant site that is a major source. For a process unit that is designated as an EPPU in accordance with this paragraph, the elastomer product that will be produced shall be designated as the primary product of the EPPU. If more than one elastomer product will be produced, the owner or operator may select which elastomer product is designated as the primary product.

(3) *Annual applicability determination for non-EPPUs that have produced an elastomer product.* Once per year beginning September 5, 2001, the owner or operator of each flexible operation unit that is not designated as an EPPU, but that has produced an elastomer product at any time in the preceding five-year period or since the date that the unit began production of any product, whichever is shorter, shall perform the evaluation described in paragraphs (f)(3)(i) through (f)(3)(iii) of this section. However, an owner or operator that does not intend to produce any elastomer product in the future, in accordance with paragraph (f)(9) of this section, is not required to perform the evaluation described in paragraphs (f)(3)(i) through (f)(3)(iii) of this section.

(i) For each product produced in the flexible operation unit, the owner or operator shall calculate the percentage of total operating time over which the product was produced during the preceding five-year period.

(ii) The owner or operator shall identify the primary product as the product with the highest percentage of total operating time for the preceding five-year period.

(iii) If the primary product identified in paragraph (f)(3)(ii) is an elastomer product, the flexible operation unit shall be designated as an EPPU. The owner or operator shall notify the Administrator no later than 45 days after determining that the flexible operation unit is an EPPU, and shall comply with the requirements of this subpart in accordance with paragraph (i)(1) of this section for the flexible operation unit.

(4) *Applicability determination for non-EPPUs that have not produced an elastomer product.* The owner or operator that anticipates the production of an elastomer product in a process unit that is not designated as an EPPU, and in which no elastomer products have been produced in the previous 5 year period or since the date that the process unit began production of any product, whichever is shorter, shall determine if the process unit is subject to this subpart in accordance with paragraphs (f)(4)(i) and (ii) of this section. Also, owners or operators who have notified the Administrator that a process unit is not an EPPU in accordance with paragraph (f)(9) of this section, that now anticipate the production of an elastomer product in the process unit, shall determine if the process unit is subject to this subpart in accordance with paragraphs (f)(4)(i) and (ii) of this section.

(i) The owner or operator shall use the procedures in paragraph (f)(1) or (f)(2) of this section to determine if the process unit is designated as an EPPU, with the following exception: for existing process units that are determining the primary product in accordance with paragraph (f)(1)(iii) of this section, production shall be projected for the five years following the date that the owner or

operator anticipates initiating the production of an elastomer product.

(ii) If the unit is designated as an EPPU in accordance with paragraph (f)(4)(i) of this section, the owner or operator shall comply in accordance with paragraph (i)(1) of this section.

(5) *Compliance for flexible operation units.* Owners or operators of EPPUs that are flexible operation units shall comply with the standards specified for the primary product, with the exceptions provided in paragraphs (f)(5)(i) and (f)(5)(ii) of this section.

(i) Whenever a flexible operation unit manufactures a product in which no organic HAP is used or manufactured, the owner or operator is only required to comply with either paragraph (b)(1) or (b)(2) of this section to demonstrate compliance for activities associated with the manufacture of that product. This subpart does not require compliance with the provisions of subpart A of this part for activities associated with the manufacture of a product that meets the criteria of paragraph (b) of this section.

(ii) Whenever a flexible operation unit manufactures a product that makes it subject to subpart GGG of this part, the owner or operator is not required to comply with the provisions of this subpart during the production of that product.

(6) Owners or operators of EPPUs that are flexible operation units have the option of determining the group status of each emission point associated with the flexible operation unit, in accordance with either paragraph (f)(6)(i) or (f)(6)(ii) of this section, with the exception of batch front-end process vents. For batch front-end process vents, the owner or operator shall determine the group status in accordance with § 63.488.

(i) The owner or operator may determine the group status of each emission point based on emission point characteristics when the primary product is being manufactured.

(ii) The owner or operator may determine the group status of each emission point separately for each product produced by the flexible operation unit. For each product, the group status shall be determined using the emission point characteristics when that product is being manufactured and using the Group 1 criteria specified for the primary product. (Note: Under this scenario, it is possible that the group status, and therefore the requirement to achieve emission reductions, for an emission point may change depending on the product being manufactured.)

(7) Owners or operators determining the group status of emission points in flexible operation units based solely on the primary product in accordance with paragraph (f)(6)(i) of this section shall establish parameter monitoring levels, as required, in accordance with either paragraph (f)(7)(i) or (f)(7)(ii) of this section. Owners or operators determining the group status of emission points in flexible operation units based on each product in accordance with paragraph (f)(6)(ii) of this section shall establish parameter monitoring levels, as required, in accordance with paragraph (f)(7)(i) of this section.

(i) Establish separate parameter monitoring levels in accordance with § 63.505(a) for each individual product.

(ii) Establish a single parameter monitoring level (for each parameter required to be monitored at each device subject to monitoring requirements) in accordance with § 63.505(a) that would apply for all products.

(8) *Reporting requirements.* When it is determined that a process unit is an EPPU and subject to the requirements of this subpart, the Notification of Compliance Status required by § 63.506(e)(5) shall include the information specified in paragraphs (f)(8)(i) and (f)(8)(ii) of this section, as applicable. If it is determined that the process unit is not subject to this subpart, the owner or operator shall either retain all information, data, and analysis used to document the basis for the determination that the primary product is not an elastomer product, or, when requested by the Administrator, demonstrate that the process unit is not subject to this subpart.

(i) If the EPPU manufactures only one elastomer product, identification of that elastomer product.

(ii) If the EPPU is designed and operated as a flexible operation unit, the information specified in paragraphs (f)(8)(ii)(A) through (f)(8)(ii)(D) of this section, as appropriate, shall be submitted.

(A) If a primary product could be determined, identification of the primary product.

(B) Identification of which compliance option, either paragraph (f)(6)(i) or (f)(6)(ii) of this section, has been selected by the owner or operator.

(C) If the option to establish separate parameter monitoring levels for each product in paragraph (f)(7)(i) of this section is selected, the identification of each product and the corresponding parameter monitoring level.

(D) If the option to establish a single parameter monitor level in paragraph (f)(7)(ii) of this section is selected, the parameter monitoring level for each parameter.

(9) *EPPUs terminating production of all elastomer products.* If an EPPU terminates the production of all elastomer products and does not anticipate the production of any elastomer products in the future, the process unit is no longer an EPPU and is not subject to this subpart after notification is made to the Administrator. This notification shall be accompanied by a rationale for why it is anticipated that no elastomer products will be produced in the process unit in the future.

(10) *Redetermination of applicability to EPPUs that are flexible operation units.* Whenever changes in production occur that could reasonably be expected to change the primary product of an EPPU that is operating as a flexible operation unit from an elastomer product to a product that would make the process unit subject to another subpart of this part, the owner or operator shall re-evaluate the status of the process unit as an EPPU in accordance with paragraphs (f)(10)(i) through (iii) of this section.

(i) For each product produced in the flexible operation unit, the owner or operator shall calculate the percentage of total operating time in which the product was produced for the preceding five-year period, or since the date that the process unit began production of any product, whichever is shorter.

(ii) The owner or operator shall identify the primary product as the product with the highest percentage of total operating time for the period.

(iii) If the conditions in (f)(10)(iii)(A) through (C) of this section are met, the flexible operation unit shall no longer be designated as an EPPU after the compliance date of the other subpart and shall no longer be subject to the provisions of this subpart after the date that the process unit is required to be in compliance with the provisions of the other subpart of this part to which it is subject. If the conditions in paragraphs (f)(10)(iii)(A) through (C) of this section are not met, the flexible operation unit shall continue to be considered an EPPU and subject to the requirements of this subpart.

(A) The product identified in (f)(10)(ii) of this section is not an elastomer product; and

(B) The production of the product identified in (f)(10)(ii) of this section is subject to another subpart of this part; and

(C) The owner or operator submits a notification to the Administrator of the pending change in applicability.

(g) *Storage vessel ownership determination.* The owner or operator shall follow the procedures specified in

paragraphs (g)(1) through (g)(7) of this section to determine to which process unit a storage vessel shall be assigned. Paragraph (g)(8) of this section specifies when an owner or operator is required to redetermine to which process unit a storage vessel is assigned.

(1) If a storage vessel is already subject to another subpart of 40 CFR part 63 on September 5, 1996, that storage vessel shall be assigned to the process unit subject to the other subpart.

(2) If a storage vessel is dedicated to a single process unit, the storage vessel shall be assigned to that process unit.

(3) If a storage vessel is shared among process units, then the storage vessel shall be assigned to that process unit located on the same plant site as the storage vessel that has the greatest input into or output from the storage vessel (*i.e.,* the process unit that has the predominant use of the storage vessel.)

(4) If predominant use cannot be determined for a storage vessel that is shared among process units and if only one of those process units is an EPPU subject to this subpart, the storage vessel shall be assigned to that EPPU.

* * * * *

(6) If the predominant use of a storage vessel varies from year to year, then predominant use shall be determined based on the utilization that occurred during the year preceding September 5, 1996 or based on the expected utilization for the 5 years following September 5, 1996, whichever is more representative of the expected operations for that storage vessel for existing affected sources, and based on the expected utilization for the first 5 years after initial start-up for new affected sources. The determination of predominant use shall be reported in the Notification of Compliance Status, as required by § 63.506(e)(5)(vii).

(7) Where a storage vessel is located at a major source that includes one or more process units which place material into, or receive materials from the storage vessel, but the storage vessel is located in a tank farm (including a marine tank farm), the applicability of this subpart shall be determined according to the provisions in paragraphs (g)(7)(i) through (g)(7)(iv) of this section.

(i) The storage vessel may only be assigned to a process unit that utilizes the storage vessel and does not have an intervening storage vessel for that product (or raw material, as appropriate). With respect to any process unit, an intervening storage vessel means a storage vessel connected by hard-piping both to the process unit and to the storage vessel in the tank farm so that product or raw material entering or leaving the process unit flows into (or from) the intervening storage vessel and does not flow directly into (or from) the storage vessel in the tank farm.

(ii) If there is no process unit at the major source that meets the criteria of paragraph (g)(7)(i) of this section with respect to a storage vessel, this subpart does not apply to the storage vessel.

(iii) If there is only one process unit at the major source that meets the criteria of paragraph (g)(7)(i) of this section with respect to a storage vessel, the storage vessel shall be assigned to that process unit. Applicability of this subpart to the storage vessel shall then be determined according to the provisions of paragraph (a) of this section.

(iv) If there are two or more process units at the major source that meet the criteria of paragraph (g)(7)(i) of this section with respect to a storage vessel, the storage vessel shall be assigned to one of those process units according to the provisions of paragraphs (g)(3) through (g)(6) of this section. The predominant use shall be determined among only those process units that meet the criteria of paragraph (g)(7)(i) of this section.

(8) If the storage vessel begins receiving material from (or sending material to) a process unit that was not included in the initial determination, or ceases to receive material from (or send material to) a process unit that was included in the initial determination, the owner or operator shall reevaluate the applicability of this subpart to that storage vessel.

(h) *Recovery operations equipment ownership determination.* The owner or operator shall follow the procedures specified in paragraphs (h)(1) through (h)(6) of this section to determine to which process unit recovery operations equipment shall be assigned. Paragraph (h)(7) of this section specifies when an owner or operator is required to redetermine to which process unit the recovery operations equipment is assigned.

(1) If recovery operations equipment is already subject to another subpart of 40 CFR part 63 on September 5, 1996, that recovery operations equipment shall be assigned to the process unit subject to the other subpart.

(2) If recovery operations equipment is dedicated to a single process unit, the recovery operations equipment shall be assigned to that process unit.

(3) If recovery operations equipment is shared among process units, then the recovery operations equipment shall be assigned to that process unit located on the same plant site as the recovery operations equipment that has the greatest input into or output from the recovery operations equipment (*i.e.,* that process unit has the predominant use of the recovery operations equipment).

(4) If predominant use cannot be determined for recovery operations equipment that is shared among process units and if one of those process units is an EPPU subject to this subpart, the recovery operations equipment shall be assigned to the EPPU subject to this subpart.

* * * * *

(6) If the predominant use of recovery operations equipment varies from year to year, then the predominant use shall be determined based on the utilization that occurred during the year preceding September 5, 1996 for existing affected sources or based on the expected utilization for the 5 years following September 5, 1996 for existing affected sources, whichever is the more representative of the expected operations for the recovery operations equipment, and based on the expected utilization for the first 5 years after initial start-up for new affected sources. The determination of predominant use shall be reported in the Notification of Compliance Status, as required by § 63.506(e)(5)(viii).

(7) If a piece of recovery operations equipment begins receiving material from a process unit that was not included in the initial determination, or ceases to receive material from a process unit that was included in the initial determination, the owner or operator shall reevaluate the applicability of this subpart to that recovery operations equipment.

(i) *Changes or additions to plant sites.* The provisions of paragraphs (i)(1) through (i)(4) of this section apply to owners or operators that change or add to their plant site or affected source. Paragraph (i)(5) provides examples of what are and are not considered process changes for purposes of paragraph (i) of this section. Paragraph (i)(6) of this section discusses reporting requirements.

(1) *Adding an EPPU to a plant site.* The provisions of paragraphs (i)(1)(i) and (i)(1)(ii) of this section apply to owners or operators that add one or more EPPUs to a plant site.

(i) If a group of one or more EPPUs that produce the same primary product is added to a plant site, the added group of one or more EPPUs and associated equipment, as listed in paragraph (a)(4) of this section, shall be a new affected source and shall comply with the requirements for a new affected source

in this subpart upon initial start-up or by June 19, 2000, whichever is later, if the added group of one or more EPPUs meets the criteria in either paragraph (i)(1)(i)(A) or (i)(1)(i)(B) of this section, and if the criteria in either paragraph (i)(1)(i)(C) or (i)(1)(i)(D) of this section are met.

(A) The construction of the group of one or more EPPUs commenced after June 12, 1995.

(B) The construction or reconstruction, for process units that have become EPPUs, commenced after June 12, 1995.

(C) The group of one or more EPPUs and associated equipment, as listed in paragraph (a)(4) of this section, has the potential to emit 10 tons per year or more of any HAP or 25 tons per year or more of any combination of HAP, and the primary product of the group of one or more EPPUs is currently produced at the plant site as the primary product of an affected source; or

(D) The primary product of the group of one or more EPPUs is not currently produced at the plant site as the primary product of an affected source, and the plant site meets, or after the addition of the group of one or more EPPUs and associated equipment, as listed in paragraph (a)(4) of this section, will meet the definition of a major source.

(ii) If a group of one or more EPPUs that produce the same primary product is added to a plant site, and the group of one or more EPPUs does not meet the criteria specified in paragraph (i)(1)(i) of this section, and the plant site meets, or after the addition will meet, the definition of a major source, the group of one or more EPPUs and associated equipment, as listed in paragraph (a)(4) of this section, shall comply with the requirements for an existing affected source in this subpart upon initial start-up; by June 19, 2001; or by 6 months after notifying the Administrator that a process unit has been designated as an EPPU (in accordance with paragraph (f)(3)(iii) of this section), whichever is later.

(2) * * *

(i) If any components are replaced at an existing affected source such that the criteria specified in paragraphs (i)(2)(i)(A) through (i)(2)(i)(B) of this section are met, the entire affected source shall be a new affected source and shall comply with the requirements for a new affected source upon initial start-up or by June 19, 2000, whichever is later.

(A) The replacement of components meets the definition of reconstruction in § 63.482(b); and

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(ii) If any components are replaced at an existing affected source such that the criteria specified in paragraphs (i)(2)(i)(A) and (i)(2)(i)(B) of this section are not met and that replacement of components creates one or more emission points (*i.e.,* either newly created Group 1 emission points or emission points that change from Group 2 to Group 1) or causes any other emission point to be added (*i.e.,* Group 2 emission points, back-end process operations subject to §§ 63.493 and 63.500, and heat exchange systems and equipment leak components subject § 63.502), the resulting emission point(s) shall be subject to the applicable requirements for an existing affected source. The resulting emission point(s) shall be in compliance upon initial start-up or by the appropriate compliance date specified in § 63.481 (*i.e.,* July 31, 1997 for most equipment leak components subject to § 63.502, and June 19, 2001 for emission points other than equipment leaks), whichever is later.

(iii) If an addition or process change (not including a process change that solely replaces components) is made that creates one or more Group 1 emission points (*i.e.*, either newly created Group 1 emission points or emission points that change group status from Group 2 to Group 1) or causes any other emission point to be added (i.e., Group 2 emission points, back-end process operations subject to §§ 63.493 through 63.500, and heat exchange systems and equipment leak components subject to § 63.502), the resulting emission point(s) shall be subject to the applicable requirements for an existing affected source. The resulting emission point(s) shall be in compliance by 120 days after the date of initial start-up or by the appropriate compliance date specified in § 63.481 (i.e., July 31, 1997 for most equipment leak components subject to § 63.502, and June 19, 2001 for emission points other than equipment leaks), whichever is later.

(3) *Existing affected source requirements for surge control vessels and bottoms receivers that become subject to subpart H requirements.* If a process change or the addition of an emission point causes a surge control vessel or bottoms receiver to become subject to § 63.170 under this paragraph (i), the owner or operator shall be in compliance upon initial start-up or by June 19, 2001, whichever is later.

(4) *Existing affected source requirements for compressors that become subject to subpart H requirements.* If a process change or the addition of an emission point causes a compressor to become subject to § 63.164 under this paragraph (i), the owner or operator shall be in compliance upon initial start-up or by the compliance date for that compressor, as specified in § 63.481(d), whichever is later.

(5) *Determining what are and are not process changes.* For purposes of paragraph (i) of this section, examples of process changes include, but are not limited to, changes in feedstock type or process catalyst type, or whenever the replacement, removal, or addition of recovery equipment, or equipment changes that increase production capacity. For purposes of paragraph (i) of this section, process changes do not include: process upsets, unintentional temporary process changes, and changes that do not alter the equipment configuration and operating conditions.

(6) *Reporting requirements for owners or operators that change or add to their plant site or affected source.* Owners or operators that change or add to their plant site or affected source, as discussed in paragraphs (i)(1) and (i)(2) of this section, shall submit a report as specified in § 63.506(e)(7)(v).

(j) *Applicability of this subpart during periods of start-up, shutdown, malfunction, or non-operation.* Paragraphs (j)(1) through (j)(4) of this section shall be followed during periods of start-up, shutdown, malfunction, or non-operation of the affected source or any part thereof.

(1) The emission limitations set forth in this subpart and the emission limitations referred to in this subpart shall apply at all times except during periods of non-operation of the affected source (or specific portion thereof) resulting in cessation of the emissions to which this subpart applies. The emission limitations of this subpart and the emission limitations referred to in this subpart shall not apply during periods of start-up, shutdown, or malfunction, except as provided in paragraphs (j)(3) and (j)(4) of this section. During periods of start-up, shutdown, or malfunction, the owner or operator shall follow the applicable provisions of the start-up, shutdown, and malfunction plan required by § 63.506(b)(1). However, if a start-up, shutdown, malfunction, or period of non-operation of one portion of an affected source does not affect the ability of a particular emission point to comply with the emission limitations to which it is subject, then that emission point shall still be required to comply with the applicable emission limitations of this subpart during the start-up, shutdown, malfunction, or period of non-operation. For example, if there is

an overpressure in the reactor area, a storage vessel that is part of the affected source would still be required to be controlled in accordance with the emission limitations in § 63.484. Similarly, the degassing of a storage vessel would not affect the ability of a batch front-end process vent to meet the emission limitations of §§ 63.486 through 63.492.

(2) The emission limitations set forth in subpart H of this part, as referred to in § 63.502, shall apply at all times except during periods of non-operation of the affected source (or specific portion thereof) in which the lines are drained and depressurized resulting in cessation of the emissions to which § 63.502 applies, or during periods of start-up, shutdown, malfunction, or process unit shutdown (as defined in § 63.161).

(3) The owner or operator shall not shut down items of equipment that are required or utilized for compliance with this subpart during periods of start-up, shutdown, or malfunction during times when emissions (or, where applicable, wastewater streams or residuals) are being routed to such items of equipment if the shutdown would contravene requirements of this subpart applicable to such items of equipment. This paragraph does not apply if the item of equipment is malfunctioning. This paragraph also does not apply if the owner or operator shuts down the compliance equipment (other than monitoring systems) to avoid damage due to a contemporaneous start-up, shutdown, or malfunction of the affected source or portion thereof. If the owner or operator has reason to believe that monitoring equipment would be damaged due to a contemporaneous start-up, shutdown, or malfunction of the affected source or portion thereof, the owner or operator shall provide documentation supporting such a claim in the Precompliance Report or in a supplement to the Precompliance Report, as provided for in § 63.506(e)(3). Once approved by the Administrator in accordance with § 63.506(e)(3)(viii), the provision for ceasing to collect, during a start-up, shutdown, or malfunction, monitoring data that would otherwise be required by the provisions of this subpart must be incorporated into the start-up, shutdown, malfunction plan for that affected source, as stated in § 63.506(b)(1).

(4) During start-ups, shutdowns, and malfunctions when the emission limitations of this subpart do not apply pursuant to paragraphs (j)(1) through (j)(3) of this section, the owner or operator shall implement, to the extent reasonably available, measures to prevent or minimize excess emissions to the extent practical. For purposes of this paragraph, the term ''excess emissions'' means emissions greater than those allowed by the emissions limitation which would apply during operational periods other than start-up, shutdown, and malfunction. The measures to be taken shall be identified in the applicable start-up, shutdown, and malfunction plan, and may include, but are not limited to, air pollution control technologies, recovery technologies, work practices, pollution prevention, monitoring, and/or changes in the manner of operation of the affected source. Back-up control devices are not required, but may be used if available.

3. Section 63.481 is amended by:

a. Revising the section title;

b. Revising paragraph (a);

c. Revising paragraph (b);

d. Revising paragraph (c);

e. Revising paragraphs (d) introductory text; (d)(1) introductory text and (d)(2) introductory text;

f. Revising paragraphs (d)(2)(i), (d)(2)(ii), and (d)(2)(iv);

i. Revising paragraph (d)(3);

j. Revising paragraph (d)(4) introductory text;

k. Revising paragraph (d)(5);

l. Revising paragraph (d)(6);

m. Revising paragraph (e);

n. Revising paragraph (h)(2);

o. Revising paragraph (i);

p. Revising paragraph (j); and

q. Adding paragraphs (k), (l), and (m).

The revisions and additions read as follows:

§ 63.481 Compliance dates and relationship of this subpart to existing applicable rules.

(a) Affected sources are required to achieve compliance on or before the dates specified in paragraphs (b) through (d) of this section. Paragraph (e) of this section provides information on requesting compliance extensions. Paragraphs (f) through (l) of this section discuss the relationship of this subpart to subpart A and to other applicable rules. Where an override of another authority of the Act is indicated in this subpart, only compliance with the provisions of this subpart is required. Paragraph (m) of this section specifies the meaning of time periods.

(b) New affected sources that commence construction or reconstruction after June 12, 1995 shall be in compliance with this subpart upon initial start-up or by June 19, 2000, whichever is later.

(c) Existing affected sources shall be in compliance with this subpart (except for § 63.502 for which compliance is covered by paragraph (d) of this section) no later than June 19, 2001, as provided in § 63.6(c), unless an extension has been granted as specified in paragraph (e) of this section.

(d) Except as provided for in paragraphs (d)(1) through (d)(6) of this section, existing affected sources shall be in compliance with § 63.502 no later than July 31, 1997, unless an extension has been granted pursuant to paragraph (e) of this section.

(1) Compliance with the compressor provisions of § 63.164 shall occur no later than September 5, 1997 for any compressor meeting one or more of the criteria in paragraphs (d)(1)(i) through (d)(1)(iv) of this section, if the work can be accomplished without a process unit shutdown, as defined in § 63.161.

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(2) Compliance with the compressor provisions of § 63.164 shall occur no later than March 5, 1998, for any compressor meeting all the criteria in paragraphs (d)(2)(i) through (d)(2)(iv) of this section.

(i) The compressor meets one or more of the criteria specified in paragraphs (d)(1)(i) through (d)(1)(iv) of this section;

(ii) The work can be accomplished without a process unit shutdown as defined in § 63.161;

* * * * *

(iv) The owner or operator submits the request for a compliance extension to the appropriate U.S. Environmental Protection Agency (EPA) Regional Office at the address listed in § 63.13 no later than 45 days before the compliance date. The request for a compliance extension shall contain the information specified in § 63.6(i)(6)(i)(A), (B), and (D). Unless the EPA Regional Office objects to the request for a compliance extension within 30 days after receipt of the request, the request shall be deemed approved.

(3) If compliance with the compressor provisions of § 63.164 cannot reasonably be achieved without a process unit shutdown, the owner or operator shall achieve compliance no later than September 5, 1998. The owner or operator who elects to use this provision shall submit a request for an extension of compliance in accordance with the requirements of paragraph (d)(2)(iv) of this section.

(4) Compliance with the compressor provisions of § 63.164 shall occur no later than September 5, 1999 for any compressor meeting one or more of the criteria in paragraphs (d)(4)(i) through (d)(4)(iii) of this section. The owner or operator who elects to use these provisions shall submit a request for an extension of compliance in accordance

with the requirements of paragraph (d)(2)(iv) of this section.

* * * * *

(5) Compliance with the surge control vessel and bottoms receiver provisions of § 63.170 shall occur no later than June 19, 2001.

(6) Compliance with the heat exchange system provisions of § 63.104 shall occur no later than June 19, 2001.

(e) Pursuant to section 112(i)(3)(B) of the Act, an owner or operator may request an extension allowing the existing affected source up to 1 additional year to comply with section 112(d) standards. For purposes of this subpart, a request for an extension shall be submitted to the permitting authority as part of the operating permit application, or to the Administrator as a separate submittal or as part of the Precompliance Report. Requests for extensions shall be submitted no later than 120 days prior to the compliance dates specified in paragraphs (b) through (d) of this section, or as specified elsewhere in this subpart, except as provided in paragraph (e)(3) of this section. The dates specified in § 63.6(i) for submittal of requests for extensions shall not apply to this subpart.

(1) A request for an extension of compliance shall include the data described in § 63.6(i)(6)(i)(A), (B), and (D).

(2) The requirements in §§ 63.6(i)(8) through 63.6(i)(14) shall govern the review and approval of requests for extensions of compliance with this subpart.

(3) An owner or operator may submit a compliance extension request after the date specified in paragraph (e) of this section, provided that the need for the compliance extension arose after that date, and the need arose due to circumstances beyond reasonable control of the owner or operator. This request shall include, in addition to the information specified in paragraph (e)(1) of this section, a statement of the reasons additional time is needed and the date when the owner or operator first learned of the circumstances necessitating a request for a compliance extension under this paragraph (e)(3).

* * * * *

(h) * * *

(2) Sources subject to 40 CFR part 63, subpart I that have elected to comply through a quality improvement program, as specified in § 63.175 or § 63.176 or both, may elect to continue these programs without interruption as a means of complying with this subpart. In other words, becoming subject to this subpart does not restart or reset the ''compliance clock'' as it relates to reduced burden earned through a quality improvement program.

(i) After the compliance dates specified in this section, a storage vessel that is assigned to an affected source subject to this subpart and that is also subject to the provisions of 40 CFR part 60, subpart Kb is required to comply only with the provisions of this subpart. After the compliance dates specified in this section, that storage vessel shall no longer be subject to 40 CFR part 60, subpart Kb.

(j) After the compliance dates specified in this section, an affected source subject to this subpart that is also subject to the provisions of 40 CFR part 60, subpart VV, is required to comply only with the provisions of this subpart. After the compliance dates specified in this section, the source shall no longer be subject to 40 CFR part 60, subpart VV.

(k) *Applicability of other regulations for monitoring, recordkeeping or reporting with respect to combustion devices, recovery devices, or recapture devices.* After the compliance dates specified in this subpart, if any combustion device, recovery device or recapture device subject to this subpart is also subject to monitoring, recordkeeping, and reporting requirements in 40 CFR part 264 subpart AA or CC, or is subject to monitoring and recordkeeping requirements in 40 CFR part 265 subpart AA or CC and the owner or operator complies with the periodic reporting requirements under 40 CFR part 264 subpart AA or CC that would apply to the device if the facility had final-permitted status, the owner or operator may elect to comply either with the monitoring, recordkeeping and reporting requirements of this subpart, or with the monitoring, recordkeeping and reporting requirements in 40 CFR parts 264 and/or 265, as described in this paragraph, which shall constitute compliance with the monitoring, recordkeeping and reporting requirements of this subpart. The owner or operator shall identify which option has been selected in the Notification of Compliance Status required by § 63.506(e)(5).

(l) *Applicability of other requirements for heat exchange systems or waste management units.* Paragraphs (l)(1) and (l)(2) of this section address instances in which certain requirements from other regulations also apply for the same heat exchange system(s) or waste management unit(s) that are subject to this subpart.

(1) After the applicable compliance date specified in this subpart, if a heat exchange system subject to this subpart is also subject to a standard identified in paragraphs (l)(1)(i) or (ii) of this section, compliance with the applicable provisions of the standard identified in paragraphs (l)(1)(i) or (ii) of this section shall constitute compliance with the applicable provisions of this subpart with respect to that heat exchange system.

(i) Subpart F of this part.

(ii) A subpart of this part which requires compliance with § 63.104 (*e.g.*, subpart JJJ of this part).

(2) After the applicable compliance date specified in this subpart, if any waste management unit subject to this subpart is also subject to a standard identified in paragraph (l)(2)(i) or (ii) of this section, compliance with the applicable provisions of the standard identified in paragraph (l)(2)(i) or (ii) of this section shall constitute compliance with the applicable provisions of this subpart with respect to that waste management unit.

(i) Subpart G of this part.

(ii) A subpart of this part which requires compliance with §§ 63.132 through 63.147 (*e.g.*, subpart JJJ of this part).

(m) All terms in this subpart that define a period of time for completion of required tasks (*e.g.*, monthly, quarterly, annual), unless specified otherwise in the section or paragraph that imposes the requirement, refer to the standard calendar periods.

(1) Notwithstanding time periods specified in this subpart for completion of required tasks, such time periods may be changed by mutual agreement between the owner or operator and the Administrator, as specified in subpart A of this part (*e.g.*, a period could begin on the compliance date or another date, rather than on the first day of the standard calendar period). For each time period that is changed by agreement, the revised period shall remain in effect until it is changed. A new request is not necessary for each recurring period.

(2) Where the period specified for compliance is a standard calendar period, if the initial compliance date occurs after the beginning of the period, compliance shall be required according to the schedule specified in paragraphs (m)(2)(i) or (m)(2)(ii) of this section, as appropriate.

(i) Compliance shall be required before the end of the standard calendar period within which the compliance deadline occurs, if there remain at least 2 weeks for tasks that shall be performed monthly, at least 1 month for tasks that shall be performed each quarter, or at least 3 months for tasks that shall be performed annually; or

(ii) In all other cases, compliance shall be required before the end of the first full standard calendar period after the period within which the initial compliance deadline occurs.

(3) In all instances where a provision of this subpart requires completion of a task during each of multiple successive periods, an owner or operator may perform the required task at any time during the specified period, provided that the task is conducted at a reasonable interval after completion of the task during the previous period.

4. Section 63.482 is amended by:

a. Revising paragraph (a);

b. Amending paragraph (b) by revising the definitions for ''Aggregate batch vent stream,'' ''Batch front-end process vent,'' ''Batch process,'' ''Batch unit operation,'' ''Compounding unit,'' ''Continuous front-end process vent,'' ''Continuous process,'' ''Continuous unit operation,'' ''Control device,'' ''Elastomer product,'' ''Elastomer product process unit (EPPU),'' ''Elastomer type,'' ''Emission point,'' ''Emulsion process,'' ''Epichlorohydrin elastomer,'' ''Ethylene-propylene rubber,'' ''Front-end,'' ''Grade,'' ''Group 1 batch front-end process vent,'' ''Group 1 continuous front-end process vent,'' ''Group 2 continuous front-end process vent,'' ''Group 1 wastewater stream,'' ''Halogenated continuous front-end process vent,'' ''Nitrile butadiene rubber,'' ''Organic hazardous air pollutant(s) (organic HAP),'' ''Process unit,'' ''Process vent,'' ''Product,'' ''Recovery operations equipment,'' ''Resin,'' ''Steady-state conditions,'' ''Storage vessel,'' ''Supplemental combustion air,'' ''Suspension process,'' and ''Total organic compounds (TOC)'';

c. Amending paragraph (b) by removing the definitions of ''Average flow rate,'' ''Batch cycle limitation,'' ''Mass process,'' ''Material recovery section,'' ''Month,'' ''Polybutadiene rubber/styrene butadiene rubber by solution,'' ''Polymerization reaction section,'' ''Raw materials preparation section,'' ''Solid state polymerization unit,'' ''Stripping Technology,'' and ''Year,''; and

d. Amending paragraph (b) by adding definitions for the terms ''Annual average batch vent concentration,'' ''Annual average batch vent flow rate,'' ''Annual average concentration,'' ''Annual average flow rate,'' ''Average batch vent concentration,'' ''Average batch vent flow rate'', ''Batch mass input limitation,'' ''Batch mode,'' ''Block polymer,'' ''Combined vent stream,'' ''Construction,'' ''Continuous mode,'' ''Continuous record,'' ''Continuous recorder,'' ''Equipment,'' ''Existing affected source,'' ''Existing process unit,'' ''Flexible operation unit,'' ''Glass transition temperature,'' ''Highest-HAP recipe,'' ''Initial start-up,'' ''Maintenance wastewater,'' ''Maximum true vapor pressure,'' ''Multicomponent system,'' ''New process unit,'' ''On-site or on site,'' ''Operating day,'' ''Polybutadiene rubber by solution,'' ''Recipe,'' ''Reconstruction,'' ''Recovery device,'' ''Residual,'' ''Shutdown,'' ''Start-up,'' ''Stripper,'' ''Stripping,'' ''Styrene butadiene rubber by solution,'' ''Total resource effectiveness index value or TRE index value,'' ''Vent stream,'' ''Waste management unit,'' ''Wastewater,'' and ''Wastewater stream.''

The revisions and additions read as follows:

§ 63.482 Definitions.

(a) The following terms used in this subpart shall have the meaning given them in § 63.2, § 63.101, § 63.111, § 63.161, or the Act, as specified after each term:

Act (§ 63.2)
Administrator (§ 63.2)
Automated monitoring and recording system (§ 63.111)
Boiler (§ 63.111)
Bottoms receiver (§ 63.161)
By compound (§ 63.111)
By-product (§ 63.101)
Car-seal (§ 63.111)
Closed-vent system (§ 63.111)
Combustion device (§ 63.111)
Commenced (§ 63.2)
Compliance date (§ 63.2)
Connector (§ 63.161)
Continuous monitoring system (§ 63.2)
Distillation unit (§ 63.111)
Duct work (§ 63.161)
Emission limitation (Section 302(k) of the Act)
Emission standard (§ 63.2)
Emissions averaging (§ 63.2)
EPA (§ 63.2)
Equipment leak (§ 63.101)
External floating roof (§ 63.111)
Fill or filling (§ 63.111)
Fixed capital cost (§ 63.2)
Flame zone (§ 63.111)
Floating roof (§ 63.111)
Flow indicator (§ 63.111)
Fuel gas system (§ 63.101)
Halogens and hydrogen halides (§ 63.111)
Hard-piping (§ 63.111)
Hazardous air pollutant (§ 63.2)
Heat exchange system (§ 63.101)
Impurity (§ 63.101)
Incinerator (§ 63.111)
In organic hazardous air pollutant service or in organic HAP service (§ 63.161)
Instrumentation system (§ 63.161)
Internal floating roof (§ 63.111)
Lesser quantity (§ 63.2)
Major source (§ 63.2)
Malfunction (§ 63.2)
Oil-water separator or organic-water separator (§ 63.111)
Open-ended valve or line (§ 63.161)
Operating permit (§ 63.101)
Organic monitoring device (§ 63.111)
Owner or operator (§ 63.2)
Performance evaluation (§ 63.2)
Performance test (§ 63.2)
Permitting authority (§ 63.2)
Plant site (§ 63.101)
Potential to emit (§ 63.2)
Pressure release (§ 63.161)
Primary fuel (§ 63.111)
Process heater (§ 63.111)
Process unit shutdown (§ 63.161)
Process wastewater (§ 63.101)
Process wastewater stream (§ 63.111)
Reactor (§ 63.111)
Recapture device (§ 63.101)
Repaired (§ 63.161)
Research and development facility (§ 63.101)
Routed to a process or route to a process (§ 63.161)
Run (§ 63.2)
Secondary fuel (§ 63.111)
Sensor (§ 63.161)
Specific gravity monitoring device (§ 63.111)
Start-up, shutdown, and malfunction plan (§ 63.101)
State (§ 63.2)
Stationary Source (§ 63.2)
Surge control vessel (§ 63.161)
Temperature monitoring device (§ 63.111)
Test method (§ 63.2)
Treatment process (§ 63.111)
Unit operation (§ 63.101)
Visible emission (§ 63.2)

(b) * * *

Aggregate batch vent stream means a gaseous emission stream containing only the exhausts from two or more batch front-end process vents that are ducted, hard-piped, or otherwise connected together for a continuous flow.

Annual average batch vent concentration is determined using Equation 17, as described in § 63.488(h)(2) for halogenated compounds.

Annual average batch vent flow rate is determined by the procedures in § 63.488(e)(3).

Annual average concentration, as used in the wastewater provisions, means the flow-weighted annual average concentration, as determined according to the procedures specified in § 63.144(b), with the exceptions noted in § 63.501, for the purposes of this subpart.

Annual average flow rate, as used in the wastewater provisions, means the

annual average flow rate, as determined according to the procedures specified in § 63.144(c), with the exceptions noted in § 63.501, for the purposes of this subpart.

Average batch vent concentration is determined by the procedures in § 63.488(b)(5)(iii) for HAP concentrations and is determined by the procedures in § 63.488(h)(1)(iii) for organic compounds containing halogens and hydrogen halides.

Average batch vent flow rate is determined by the procedures in § 63.488(e)(1) and (e)(2).

* * * * *

Batch front-end process vent means a process vent with annual organic HAP emissions greater than 225 kilograms per year from a batch unit operation within an affected source and located in the front-end of a process unit. Annual organic HAP emissions are determined as specified in § 63.488(b) at the location specified in § 63.488(a)(2).

Batch mass input limitation means an enforceable restriction on the total mass of HAP or material that can be input to a batch unit operation in one year.

Batch mode means the discontinuous bulk movement of material through a unit operation. Mass, temperature, concentration, and other properties may vary with time. For a unit operation operated in a batch mode (*i.e.,* batch unit operation), the addition of material and withdrawal of material do not typically occur simultaneously.

Batch process means, for the purposes of this subpart, a process where the reactor(s) is operated in a batch mode.

Batch unit operation means a unit operation operated in a batch mode.

Block polymer means a polymer where the polymerization is controlled, usually by performing discrete polymerization steps, such that the final polymer is arranged in a distinct pattern of repeating units of the same monomer.

* * * * *

Combined vent stream, as used in reference to batch front-end process vents, continuous front-end process vents, and aggregate batch vent streams, means the emissions from a combination of two or more of the aforementioned types of process vents. The primary occurrence of a combined vent stream is as combined emissions from a continuous front-end process vent and a batch front-end process vent.

* * * * *

Compounding unit means a unit operation which blends, melts, and resolidifies solid polymers for the purpose of incorporating additives, colorants, or stabilizers into the final elastomer product. A unit operation whose primary purpose is to remove residual monomers from polymers is not a compounding unit.

Construction means the on-site fabrication, erection, or installation of an affected source. Construction also means the on-site fabrication, erection, or installation of a process unit or combination of process units which subsequently becomes an affected source or part of an affected source, due to a change in primary product.

Continuous front-end process vent means a process vent located in the front-end of a process unit and containing greater than 0.005 weight percent total organic HAP from a continuous unit operation within an affected source. The total organic HAP weight percent is determined after the last recovery device, as described in § 63.115(a), and is determined as specified in § 63.115(c).

Continuous mode means the continuous movement of material through a unit operation. Mass, temperature, concentration, and other properties typically approach steady-state conditions. For a unit operation operated in a continuous mode (*i.e.,* continuous unit operation), the simultaneous addition of raw material and withdrawal of product is typical.

Continuous process means, for the purposes of this subpart, a process where the reactor(s) is operated in a continuous mode.

Continuous record means documentation, either in hard copy or computer readable form, of data values measured at least once every 15 minutes and recorded at the frequency specified in § 63.506(d) or (h).

Continuous recorder means a data recording device that either records an instantaneous data value at least once every 15 minutes or records 1-–hour or more frequent block average values.

Continuous unit operation means a unit operation operated in a continuous mode.

Control device is defined in § 63.111, except that the term ''continuous front-end process vent'' shall apply instead of the term ''process vent,'' for the purpose of this subpart.

* * * * *

Elastomer product means one of the following types of products, as they are defined in this section:

(1) Butyl Rubber;
(2) Halobutyl Rubber;
(3) Epichlorohydrin Elastomer;
(4) Ethylene Propylene Rubber;
(5) Hypalon™;
(6) Neoprene;
(7) Nitrile Butadiene Rubber;
(8) Nitrile Butadiene Latex;
(9) Polybutadiene Rubber/Styrene Butadiene Rubber by Solution;
(10) Polysulfide Rubber;
(11) Styrene Butadiene Rubber by Emulsion; and
(12) Styrene Butadiene Latex.

Elastomer product process unit (EPPU) means a collection of equipment assembled and connected by hard-piping or duct work, used to process raw materials and to manufacture an elastomer product as its primary product. This collection of equipment includes unit operations; recovery operations equipment; process vents; storage vessels, as determined in § 63.480(g); equipment that is identified in § 63.149; and the equipment that is subject to the equipment leak provisions as specified in § 63.502. Utilities, lines and equipment not containing process fluids, and other non-process lines, such as heating and cooling systems which do not combine their materials with those in the processes they serve, are not part of an elastomer product process unit. An elastomer product process unit consists of more than one unit operation.

Elastomer type means one of the elastomers listed under ''elastomer product'' in this section. Each elastomer identified in that definition represents a different elastomer type.

Emission point means an individual continuous front-end process vent, batch front-end process vent, back-end process vent, storage vessel, waste management unit, heat exchange system, or equipment leak, or equipment subject to § 63.149.

Emulsion process means a process where the monomer(s) is dispersed in droplets throughout a water phase, with the aid of an emulsifying agent such as soap or a synthetic emulsifier. The polymerization occurs either within the emulsion droplet or in the aqueous phase.

Epichlorohydrin elastomer means an elastomer formed from the polymerization or copolymerization of epichlorohydrin (EPI). The main epichlorohydrin elastomers are polyepichlorohydrin, epi-ethylene oxide (EO) copolymer, epi-allyl glycidyl ether (AGE) copolymer, and epi-EO-AGE terpolymer. Epoxies produced by the copolymerization of EPI and bisphenol A are not epichlorohydrin elastomers.

Equipment means, for the purposes of the provisions in § 63.502(a) through (m) and the requirements in subpart H that are referred to in § 63.502(a) through (m), each pump, compressor, agitator, pressure relief device, sampling connection system, open-ended valve or line, valve, connector, surge control vessel, bottoms receiver, and

instrumentation system in organic hazardous air pollutant service; and any control devices or systems required by subpart H of this part.

Ethylene-propylene rubber means an ethylene-propylene copolymer or an ethylene-propylene terpolymer. Ethylene-propylene copolymers (EPM) result from the polymerization of ethylene and propylene and contain a saturated chain of the polymethylene type. Ethylene-propylene terpolymers (EPDM) are produced in a similar manner as EPM, except that a third monomer is added to the reaction sequence. Typical third monomers include ethylidene norbornene, 1,4-hexadiene, or dicyclopentadiene. Ethylidene norbornene is the most commonly used. The production process includes, but is not limited to, polymerization, recycle, recovery, and packaging operations. The polymerization reaction may occur in either a solution process or a suspension process.

Existing affected source is defined in § 63.480(a)(3).

Existing process unit means any process unit that is not a new process unit.

* * * * *

Flexible operation unit means a process unit that manufactures different chemical products, polymers, or resins periodically by alternating raw materials or operating conditions. These units are also referred to as campaign plants or blocked operations.

Front-end refers to the unit operations in an EPPU prior to, and including, the stripping operations. For all gas-phased reaction processes, all unit operations are considered to be front-end.

* * * * *

Glass transition temperature means the temperature at which an elastomer polymer becomes rigid and brittle.

Grade means a group of recipes of an elastomer type having similar characteristics such as molecular weight, monomer composition, significant mooney values, and the presence or absence of extender oil and/or carbon black. More than one recipe may be used to produce the same grade.

Group 1 batch front-end process vent means a batch front-end process vent releasing annual organic HAP emissions greater than or equal to 11,800 kg/yr and with a cutoff flow rate, calculated in accordance with § 63.488(f), greater than or equal to the annual average batch vent flow rate. Annual organic HAP emissions and annual average batch vent flow rate are determined at the exit of the batch unit operation, as described in § 63.488(a)(2). Annual organic HAP emissions are determined as specified in § 63.488(b), and annual average batch vent flow rate is determined as specified in § 63.488(e).

* * * * *

Group 1 continuous front-end process vent means a continuous front-end process vent for which the flow rate is greater than or equal to 0.005 standard cubic meter per minute, the total organic HAP concentration is greater than or equal to 50 parts per million by volume, and the total resource effectiveness index value, calculated according to § 63.115, is less than or equal to 1.0.

Group 2 continuous front-end process vent means a continuous front-end process vent for which the flow rate is less than 0.005 standard cubic meter per minute, the total organic HAP concentration is less than 50 parts per million by volume, or the total resource effectiveness index value, calculated according to § 63.115, is greater than 1.0.

* * * * *

Group 1 wastewater stream means a wastewater stream consisting of process wastewater from an existing or new affected source that meets the criteria for Group 1 status in § 63.132(c), with the exceptions listed in § 63.501(a)(10) for the purposes of this subpart (i.e., for organic HAP listed on Table 5 of this subpart only).

* * * * *

Halogenated continuous front-end process vent means a continuous front-end process vent determined to have a mass emission rate of halogen atoms contained in organic compounds of 0.45 kg/hr or greater determined by the procedures presented in § 63.115(d)(2)(v).

* * * * *

Highest-HAP recipe for a product means the recipe of the product with the highest total mass of HAP charged to the reactor during the production of a single batch of product.

* * * * *

Initial start-up means the first time a new or reconstructed affected source begins production of an elastomer product, or, for equipment added or changed as described in § 63.480(i), the first time the equipment is put into operation to produce an elastomer product. Initial start-up does not include operation solely for testing equipment. Initial start-up does not include subsequent start-ups of an affected source or portion thereof following malfunctions or shutdowns or following changes in product for flexible operation units or following recharging of equipment in batch operation. Further, for purposes of § 63.502, initial start-up does not include subsequent start-ups of affected sources or portions thereof following malfunctions or process unit shutdowns.

* * * * *

Maintenance wastewater is defined in § 63.101, except that the term ''elastomer product process unit'' shall apply whenever the term ''chemical manufacturing process unit'' is used. Further, the generation of wastewater from the routine rinsing or washing of equipment in batch operation between batches is not maintenance wastewater, but is considered to be process wastewater, for the purposes of this subpart.

Maximum true vapor pressure is defined in § 63.111, except that the terms ''transfer'' and ''transferred'' shall not apply for the purposes of this subpart.

Multicomponent system means, as used in conjunction with batch front-end process vents, a stream whose liquid and/or vapor contains more than one compound.

* * * * *

New process unit means a process unit for which the construction or reconstruction commenced after June 12, 1995.

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Nitrile butadiene rubber means a polymer consisting primarily of unsaturated nitriles and dienes, usually acrylonitrile and 1,3-butadiene, not including nitrile butadiene latex.

On-site or on site means, with respect to records required to be maintained by this subpart or required by another subpart referenced by this subpart, that records are stored at a location within a major source which encompasses the affected source. On-site includes, but is not limited to, storage at the affected source or EPPU to which the records pertain, or storage in central files elsewhere at the major source.

Operating day means the period defined by the owner or operator in the Notification of Compliance Status required by § 63.506(e)(5). The operating day is the period for which daily average monitoring values and batch cycle daily average monitoring values are determined.

Organic hazardous air pollutant(s) (organic HAP) means one or more of the chemicals listed in Table 5 of this subpart or any other chemical which:

(1) Is knowingly produced or introduced into the manufacturing process other than as an impurity; and

(2) Is listed in Table 2 of subpart F of this part.

Polybutadiene rubber by solution means a polymer of 1,3-butadiene produced using a solution process.

* * * * *

Process unit means a collection of equipment assembled and connected by hard-piping or duct work, used to process raw materials and to manufacture a product.

Process vent means a gaseous emission stream from a unit operation that is discharged to the atmosphere either directly or after passing through one or more control, recovery, or recapture devices. Unit operations that may have process vents are condensers, distillation units, reactors, or other unit operations within the EPPU. Process vents exclude pressure releases, gaseous streams routed to a fuel gas system(s), and leaks from equipment regulated under § 63.502. A gaseous emission stream is no longer considered to be a process vent after the stream has been controlled and monitored in accordance with the applicable provisions of this subpart.

Product means a polymer produced using the same monomers and varying in additives (*e.g.,* initiators, terminators, etc.); catalysts; or in the relative proportions of monomers, that is manufactured by a process unit. With respect to polymers, more than one recipe may be used to produce the same product, and there can be more than one grade of a product. As an example, styrene butadiene latex and halobutyl rubber each represent a different product. Product also means a chemical that is not a polymer, that is manufactured by a process unit. By-products, isolated intermediates, impurities, wastes, and trace contaminants are not considered products.

Recipe means a specific composition, from among the range of possible compositions that may occur within a product, as defined in this section. A recipe is determined by the proportions of monomers and, if present, other reactants and additives that are used to make the recipe. For example, styrene butadiene latex without additives; styrene butadiene latex with an additive; and styrene butadiene latex with different proportions of styrene to butadiene are all different recipes of the same product, styrene butadiene latex.

Reconstruction means the addition of new components or the replacement of existing components at an affected source or at a previously unaffected stationary source that becomes an affected source as a result of the change, to such an extent that:

(1) The fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct a comparable new affected source; and

(2) It is technologically and economically feasible for the reconstructed source to meet the provisions of this subpart.

Recovery device means:

(1) An individual unit of equipment capable of and normally used for the purpose of recovering chemicals for:

(i) Use;

(ii) Reuse;

(iii) Fuel value (*i.e.,* net heating value); or

(iv) For sale for use, reuse, or fuel value (*i.e.,* net heating value).

(2) Examples of equipment that may be recovery devices include absorbers, carbon adsorbers, condensers, oil-water separators or organic-water separators, or organic removal devices such as decanters, strippers, or thin film evaporation units. For the purposes of the monitoring, recordkeeping, or reporting requirements of this subpart, recapture devices are considered recovery devices.

Recovery operations equipment means the equipment used to separate the components of process streams. Recovery operations equipment includes distillation units, condensers, etc. Equipment used for wastewater treatment and recovery or recapture devices used as control devices shall not be considered recovery operations equipment.

Residual is defined in § 63.111, except that when the definition in § 63.111 uses the term ''Table 9 compounds,'' the term ''organic HAP listed in Table 5 of subpart U of this part'' shall apply, for the purposes of this subpart.

Resin, for the purposes of this subpart, means a polymer with the following characteristics:

(1) The polymer is a block polymer;

(2) The manufactured polymer does not require vulcanization to make useful products;

(3) The polymer production process is operated to achieve at least 99 percent monomer conversion; and

(4) The polymer process unit does not recycle unreacted monomer back to the process.

Shutdown means for purposes including, but not limited to, periodic maintenance, replacement of equipment, or repair, the cessation of operation of an affected source, an EPPU within an affected source, a waste management unit or unit operation within an affected source, or equipment required or used to comply with this subpart, or the emptying or degassing of a storage vessel. For purposes of the wastewater provisions of § 63.501, shutdown does not include the routine rinsing or washing of equipment in batch operation between batches. For purposes of the batch front-end process vent provisions in §§ 63.486 through 63.492, the cessation of equipment in batch operation is not a shutdown, unless the equipment undergoes maintenance, is replaced, or is repaired.

* * * * *

Start-up means the setting into operation of an affected source, an EPPU within the affected source, a waste management unit or unit operation within an affected source, or equipment required or used to comply with this subpart, or a storage vessel after emptying and degassing. For both continuous and batch front-end processes, start-up includes initial start-up and operation solely for testing equipment. For both continuous and batch front-end processes, start-up does not include the recharging of equipment in batch operation. For continuous front-end processes, start-up includes transitional conditions due to changes in product for flexible operation units. For batch front-end processes, start-up does not include transitional conditions due to changes in product for flexible operation units.

Steady-state conditions means that all variables (temperatures, pressures, volumes, flow rates, etc.) in a process do not vary significantly with time; minor fluctuations about constant mean values may occur.

Storage vessel means a tank or other vessel that is used to store liquids that contain one or more organic HAP. Storage vessels do not include:

(1) Vessels permanently attached to motor vehicles such as trucks, railcars, barges, or ships;

(2) Pressure vessels designed to operate in excess of 204.9 kilopascals and without emissions to the atmosphere;

(3) Vessels with capacities smaller than 38 cubic meters;

(4) Vessels and equipment storing and/or handling material that contains no organic HAP, or organic HAP as impurities only;

(5) Surge control vessels and bottoms receivers; and

(6) Wastewater storage tanks.

Stripper means a unit operation where stripping occurs.

Stripping means the removal of organic compounds from a raw elastomer product. In the production of an elastomer, stripping is a discrete step that occurs after the reactors and before the dryers (other than those dryers with a primary purpose of devolitalization) and other finishing operations.

Examples of types of stripping include steam stripping, direct volatilization, chemical stripping, and other methods of devolatilization. For the purposes of this subpart, devolatilization that occurs in dryers (other than those dryers with a primary purpose of devolitalization), extruders, and other finishing operations is not stripping.

* * * * *

Styrene butadiene rubber by solution means a polymer that consists primarily of styrene and butadiene monomer units and is produced using a solution process.

Supplemental combustion air means the air that is added to a vent stream after the vent stream leaves the unit operation. Air that is part of the vent stream as a result of the nature of the unit operation is not considered supplemental combustion air. Air required to operate combustion device burner(s) is not considered supplemental combustion air. Air required to ensure the proper operation of catalytic oxidizers, to include the intermittent addition of air upstream of the catalyst bed to maintain a minimum threshold flow rate through the catalyst bed or to avoid excessive temperatures in the catalyst bed, is not considered to be supplemental combustion air.

Suspension process means a polymerization process where the monomer(s) is in a state of suspension, with the help of suspending agents in a medium other than water (typically an organic solvent). The resulting polymers are not soluble in the reactor medium.

Total organic compounds (TOC) means those compounds, excluding methane and ethane, measured according to the procedures of Method 18 or Method 25A, 40 CFR part 60, appendix A.

Total resource effectiveness index value or TRE index value means a measure of the supplemental total resource requirement per unit reduction of organic HAP associated with a continuous front-end process vent stream, based on vent stream flow rate, emission rate of organic HAP, net heating value, and corrosion properties (whether or not the continuous front-end process vent stream contains halogenated compounds), as quantified by the equations given under § 63.115, with the exceptions noted in § 63.485.

Vent stream, as used in reference to batch front-end process vents, continuous front-end process vents, and aggregate batch vent streams, means the emissions from one or more process vents.

Waste management unit is defined in § 63.111, except that where the definition in § 63.111 uses the term ''chemical manufacturing process unit,'' the term ''EPPU'' shall apply for the purposes of this subpart.

Wastewater means water that:

(1) Contains either:

(i) An annual average concentration of organic HAP listed in Table 5 of this subpart of at least 5 parts per million by weight and has an annual average flow rate of 0.02 liter per minute or greater; or

(ii) An annual average concentration of organic HAP listed on Table 5 of this subpart of at least 10,000 parts per million by weight at any flow rate; and

(2) Is discarded from an EPPU that is part of an affected source. Wastewater is process wastewater or maintenance wastewater.

Wastewater stream means a stream that contains wastewater as defined in this section.

5. Section 63.483 is amended by:

a. Revising paragraph (a) introductory text;

b. Revising paragraph (b);

c. Revising paragraph (c); and

d. Adding paragraph (d).

The revisions and addition read as follows:

§ 63.483 Emission standards.

(a) Except as allowed under paragraphs (b) through (d) of this section, the owner or operator of an existing or new affected source shall comply with the provisions in:

* * * * *

(b) When emissions of different kinds (*i.e.*, emissions from continuous front-end process vents, batch front-end process vents, aggregate batch vent streams, storage vessels, process wastewater, and/or in-process equipment subject to § 63.149) are combined, and at least one of the emission streams would be classified as Group 1 in the absence of combination with other emission streams, the owner or operator of an affected source shall comply with the requirements of either paragraph (b)(1) or (b)(2) of this section, as appropriate. For purposes of this paragraph (b), owners or operators of affected sources with combined emission streams containing one or more batch front-end process vents and containing one or more continuous front-end process vents may comply with either paragraph (b)(1) or (b)(2) of this section, as appropriate. For purposes of this paragraph (b), owners or operators of affected sources with combined emission streams containing one or more batch front-end process vents but not containing one or more continuous process vents shall comply with paragraph (b)(3) of this section.

(1) Comply with the applicable requirements of this subpart for each kind of emission in the stream as specified in paragraphs (a)(1) through (a)(6) of this section.

(2) Comply with the first set of requirements, identified in paragraphs (b)(2)(i) through (b)(2)(v) of this section, which applies to any individual emission stream that is included in the combined stream, where either that emission stream would be classified as Group 1 in the absence of combination with other emission streams, or the owner or operator chooses to consider that emission stream to be Group 1 for purposes of this paragraph. Compliance with the first applicable set of requirements identified in paragraphs (b)(2)(i) through (b)(2)(v) of this section constitutes compliance with all other requirements in paragraphs (b)(2)(i) through (b)(2)(v) of this section applicable to other types of emissions in the combined stream.

(i) The requirements of this subpart for Group 1 continuous front-end process vents, including applicable monitoring, recordkeeping, and reporting;

(ii) The requirements of § 63.119(e), as specified in § 63.484, for control of emissions from Group 1 storage vessels, including applicable monitoring, recordkeeping, and reporting;

(iii) The requirements of § 63.139, as specified in § 63.501, for control devices used to control emissions from waste management units, including applicable monitoring, recordkeeping, and reporting;

(iv) The requirements of § 63.139, as specified in § 63.501, for closed vent systems for control of emissions from in-process equipment subject to § 63.149, as specified in § 63.501, including applicable monitoring, recordkeeping, and reporting; or

(v) The requirements of this subpart for aggregate batch vent streams, including applicable monitoring, recordkeeping, and reporting.

(3) The owner or operator of an affected source with combined emission streams containing one or more batch front-end process vents, but not containing one or more continuous front-end process vents, shall comply with paragraphs (b)(3)(i) and (b)(3)(ii) of this section.

(i) The owner or operator of the affected source shall comply with § 63.486 for the batch front-end process vent stream(s).

(ii) The owner or operator of the affected source shall comply with either paragraph (b)(1) or (b)(2) of this section, as appropriate, for the remaining emission streams.

(c) Instead of complying with §§ 63.484, 63.485, 63.493, and 63.501, the owner or operator of an existing affected source may elect to control any or all of the storage vessels, continuous front-end process vents, batch front-end process vents, aggregate batch vent streams, back-end process emissions, and wastewater streams and associated waste management units within the affected source, to different levels using an emissions averaging compliance approach that uses the procedures specified in § 63.503. The restrictions concerning which emission points may be included in an emissions average, including how many emission points may be included, are specified in § 63.503(a)(1). An owner or operator electing to use emissions averaging shall still comply with the provisions of §§ 63.484, 63.485, 63. 486, 63.493, and 63.501 for affected source emission points not included in the emissions average.

(d) A State may decide not to allow the use of the emissions averaging compliance approach specified in paragraph (c) of this section.

6. Section 63.484 is amended by:

a. Revising paragraph (a);

b. Revising paragraph (b)(2);

c. Revising paragraph (c);

d. Revising paragraph (d);

e. Revising paragraph (e);

f. Revising paragraph (f);

g. Revising paragraph (g);

h. Revising paragraph (h);

i. Revising paragraph (i) introductory text;

j. Revising paragraph (i)(1);

k. Revising paragraph (j);

l. Revising paragraph (k);

m. Revising paragraph (l);

n. Revising paragraph (m);

o. Revising paragraph (n);

p. Revising paragraph (o);

q. Revising paragraph (p);

r. Revising paragraph (q);

s. Adding paragraph (r); and

t. Adding paragraph (s).

The revisions and additions read as follows:

§ 63.484 Storage vessel provisions.

(a) This section applies to each storage vessel that is assigned to an affected source, as determined by § 63.480(g). Except for those storage vessels exempted by paragraph (b) of this section, the owner or operator of affected sources shall comply with the requirements of §§ 63.119 through 63.123 and 63.148, with the differences noted in paragraphs (c) through (s) of this section, for the purposes of this subpart.

(b) * * *

(2) Storage vessels containing latex products other than styrene-butadiene latex, located downstream of the stripping operations;

* * * * *

(c) When the term ''storage vessel'' is used in §§ 63.119 through 63.123, the definition of this term in § 63.482 shall apply for the purposes of this subpart.

(d) When the term ''Group 1 storage vessel'' is used in §§ 63.119 through 63.123, the definition of this term in § 63.482 shall apply for the purposes of this subpart.

(e) When the term ''Group 2 storage vessel'' is used in §§ 63.119 through 63.123, the definition of this term in § 63.482 shall apply for the purposes of this subpart.

(f) When the emissions averaging provisions of § 63.150 are referred to in § 63.119 and § 63.123, the emissions averaging provisions contained in § 63.503 shall apply for the purposes of this subpart.

(g) When December 31, 1992 is referred to in § 63.119, June 12, 1995 shall apply instead, for the purposes of this subpart.

(h) When April 22, 1994 is referred to in § 63.119, June 19, 2000 shall apply instead, for the purposes of this subpart.

(i) The owner or operator of an affected source shall comply with this paragraph instead of § 63.120(d)(1)(ii) for the purposes of this subpart. If the control device used to comply with § 63.119(e) is also used to comply with any of the requirements found in §§ 63.485 through 63.501, the performance test required in or accepted by the applicable requirements in §§ 63.485 through 63.501 is acceptable for demonstrating compliance with § 63.119(e), for the purposes of this subpart. The owner or operator will not be required to prepare a design evaluation for the control device as described in § 63.120(d)(1)(i), if the performance test meets the criteria specified in paragraphs (i)(1) and (i)(2) of this section.

(1) The performance test demonstrates that the control device achieves greater than or equal to the required control efficiency specified in § 63.119(e)(1) or § 63.119(e)(2), as applicable; and

* * * * *

(j) When the term ''range'' is used in §§ 63.120(d)(3)(i), 63.120(d)(5), and 63.122(g)(2), the term ''level'' shall apply instead, for the purposes of this subpart.

(k) For purposes of this subpart, the monitoring plan required by § 63.120(d)(2) shall specify for which control devices the owner or operator has selected to follow the procedures for continuous monitoring specified in § 63.505. For those control devices for which the owner or operator has selected to not follow the procedures for continuous monitoring specified in § 63.505, the monitoring plan shall include a description of the parameter or parameters to be monitored to ensure that the control device is being properly operated and maintained, an explanation of the criteria used for selection of that parameter (or parameters), and the frequency with which monitoring will be performed (*e.g.,* when the liquid level in the storage vessel is being raised), as specified in § 63.120(d)(2)(i).

(l) For purposes of this subpart, the monitoring plan required by § 63.122(b) shall be included in the Notification of Compliance Status required by § 63.506(e)(5).

(m) When the Notification of Compliance Status requirements contained in § 63.152(b) are referred to in §§ 63.120, 63.122, and 63.123, the Notification of Compliance Status requirements contained in § 63.506(e)(5) shall apply for the purposes of this subpart.

(n) When the Periodic Report requirements contained in § 63.152(c) are referred to in §§ 63.120 and 63.122, the Periodic Report requirements contained in § 63.506(e)(6) shall apply for the purposes of this subpart.

(o) When other reports as required in § 63.152(d) are referred to in § 63.122, the reporting requirements contained in § 63.506(e)(7) shall apply for the purposes of this subpart.

(p) When the Initial Notification requirements contained in § 63.151(b) are referred to in §§ 63.119 through 63.123, for the purposes of this subpart the owner or operator of an affected source need not comply.

(q) When the determination of equivalence criteria in § 63.102(b) are referred to in § 63.121(a), the provisions in § 63.6(g) shall apply for the purposes of this subpart.

(r) When § 63.119(a) requires compliance according to the schedule provisions in § 63.100, owners and operators of affected sources shall instead comply with the requirements in §§ 63.119(a)(1) through 63.119(a)(4) by the compliance date for storage vessels, which is specified in § 63.481.

(s) In § 63.120(e)(1), instead of the reference to § 63.11(b), the requirements of § 63.504(c) shall apply.

7. Section 63.485 is revised to read as follows:

§ 63.485 Continuous front-end process vent provisions.

(a) For each continuous front-end process vent located at an affected source, the owner or operator shall

comply with the requirements of §§ 63.113 through 63.118, except as provided for in paragraphs (b) through (v) of this section. The owner or operator of continuous front-end process vents that are combined with one or more batch front-end process vents shall comply with paragraph (o) or (p) of this section.

(b) When the term ''process vent'' is used in §§ 63.113 through 63.118, the term ''continuous front-end process vent,'' and the definition of this term in § 63.482 shall apply for the purposes of this subpart.

(c) When the term ''halogenated process vent'' is used in §§ 63.113 through 63.118, the term ''halogenated continuous front-end process vent,'' and the definition of this term in § 63.482 shall apply for the purposes of this subpart.

(d) When the term ''Group 1 process vent'' is used in §§ 63.113 through 63.118, the term ''Group 1 continuous front-end process vent,'' and the definition of this term in § 63.482 shall apply for the purposes of this subpart.

(e) When the term ''Group 2 process vent'' is used in §§ 63.113 through 63.118, the term ''Group 2 continuous front-end process vent,'' and the definition of this term in § 63.482 shall apply for the purposes of this subpart.

(f) When December 31, 1992 (i.e., the proposal date for subpart G of this part) is referred to in § 63.113, June 12, 1995 shall instead apply, for the purposes of this subpart.

(g) When §§ 63.151(f), alternative monitoring parameters, and 63.152(e), submission of an operating permit, are referred to in §§ 63.114(c) and 63.117(e), 63.506(f), alternative monitoring parameters, and § 63.506(e)(8), submission of an operating permit, respectively, shall apply for the purposes of this subpart.

(h) When the Notification of Compliance Status requirements contained in § 63.152(b) are referred to in §§ 63.114, 63.117, and 63.118, the Notification of Compliance Status requirements contained in § 63.506(e)(5) shall apply for the purposes of this subpart.

(i) When the Periodic Report requirements contained in § 63.152(c) are referred to in §§ 63.117 and 63.118, the Periodic Report requirements contained in § 63.506(e)(6) shall apply for the purposes of this subpart.

(j) When the definition of excursion in § 63.152(c)(2)(ii)(A) is referred to in § 63.118(f)(2), the definition of excursion in § 63.505(g) and (h) shall apply for the purposes of this subpart.

(k) When § 63.114(e) specifies that an owner or operator shall submit the information required in § 63.152(b) in order to establish the parameter monitoring range, the owner or operator of an affected source shall comply with the provisions of § 63.505 for establishing the parameter monitoring level and shall comply with § 63.506(e)(5) for the purposes of reporting information related to the establishment of the parameter monitoring level, for the purposes of this subpart. Further, the term ''level'' shall apply whenever the term ''range'' is used in §§ 63.114, 63.117, and 63.118.

(l) When reports of process changes are required under § 63.118(g), (h), (i), or (j), paragraphs (l)(1) through (l)(4) of this section shall apply for the purposes of this subpart. In addition, for the purposes of this subpart paragraph (l)(5) of this section applies, and § 63.118(k) does not apply to owners or operators of affected sources.

(1) For the purposes of this subpart, whenever a process change, as defined in § 63.115(e), is made that causes a Group 2 continuous front-end process vent to become a Group 1 continuous front-end process vent, the owner or operator shall submit a report within 180 days after the process change is made or with the next Periodic Report, whichever is later. A description of the process change shall be submitted with the report of the process change, and the owner or operator of the affected source shall comply with the Group 1 provisions in §§ 63.113 through 63.118 in accordance with § 63.480(i)(2)(ii) or (i)(2)(iii), as applicable.

(2) Whenever a process change, as defined in § 63.115(e), is made that causes a Group 2 continuous front-end process vent with a TRE greater than 4.0 to become a Group 2 continuous front-end process vent with a TRE less than 4.0, the owner or operator shall submit a report within 180 days after the process change is made or with the next Periodic Report, whichever is later. A description of the process change shall be submitted with the report of the process change, and the owner or operator shall comply with the provisions in § 63.113(d) by the dates specified in § 63.481.

(3) Whenever a process change, as defined in § 63.115(e), is made that causes a Group 2 continuous front-end process vent with a flow rate less than 0.005 standard cubic meter per minute (scmm) to become a Group 2 continuous front-end process vent with a flow rate of 0.005 scmm or greater and a TRE index value less than or equal to 4.0, the owner or operator shall submit a report within 180 days after the process change is made or with the next Periodic Report, whichever is later. A description of the process change shall be submitted with the report of the process change, and the owner or operator shall comply with the provisions in § 63.113(d) by the dates specified in § 63.481.

(4) Whenever a process change, as defined in § 63.115(e), is made that causes a Group 2 continuous front-end process vent with an organic HAP concentration less than 50 parts per million by volume (ppmv) to become a Group 2 continuous front-end process vent with an organic HAP concentration of 50 ppmv or greater and a TRE index value less than or equal to 4.0, the owner or operator shall submit a report within 180 days after the process change is made or with the next Periodic Report, whichever is later. A description of the process change shall be submitted with the report of the process change, and the owner or operator shall comply with the provisions in § 63.113(d) by the dates specified in § 63.481.

(5) The owner or operator is not required to submit a report of a process change if one of the conditions listed in paragraphs (l)(5)(i), (l)(5)(ii), (l)(5)(iii), or (l)(5)(iv) of this section is met.

(i) The change does not meet the description of a process change in § 63.115(e);

(ii) The vent stream flow rate is recalculated according to § 63.115(e) and the recalculated value is less than 0.005 standard cubic meter per minute;

(iii) The organic HAP concentration of the vent stream is recalculated according to § 63.115(e) and the recalculated value is less than 50 parts per million by volume; or

(iv) The TRE index value is recalculated according to § 63.115(e) and the recalculated value is greater than 4.0.

(m) When § 63.118 (periodic reporting and recordkeeping requirements) refers to § 63.152(f), the recordkeeping requirements in § 63.506(d) shall apply for the purposes of this subpart.

(n) When §§ 63.115 and 63.116 refer to Table 2 of subpart F of this part, the owner or operator is only required to consider organic HAP listed on Table 5 of this subpart, for the purposes of this subpart.

(o) If a batch front-end process vent or aggregate batch vent stream is combined with a continuous front-end process vent, the owner or operator of the affected source containing the combined vent stream shall comply with paragraph (o)(1); with paragraph (o)(2) and with paragraph (o)(3) or (o)(4); or with paragraph (o)(5) of this section, as appropriate.

(1) If a batch front-end process vent or aggregate batch vent stream is combined with a Group 1 continuous front-end

process vent prior to the combined vent stream being routed to a control device, the owner or operator of the affected source containing the combined vent stream shall comply with the requirements in paragraph (o)(1)(i) or (o)(1)(ii) of this section.

(i) All requirements for a Group 1 process vent stream in §§ 63.113 through 63.118, except as otherwise provided in this section. As specified in § 63.504(a)(1), performance tests shall be conducted at maximum representative operating conditions. For the purpose of conducting a performance test on a combined vent stream, maximum representative operating conditions shall be when batch emission episodes are occurring that result in the highest organic HAP emission rate (for the combined vent stream) that is achievable during one of the periods listed in § 63.504(a)(1)(i) or § 63.504(a)(1)(ii), without causing any of the situations described in paragraphs (o)(1)(i)(A) through (o)(1)(i)(C) of this section to occur.

(A) Causing damage to equipment;

(B) Necessitating that the owner or operator make product that does not meet an existing specification for sale to a customer; or

(C) Necessitating that the owner or operator make product in excess of demand.

(ii) Comply with the provisions in § 63.483(b)(1), as allowed under § 63.483(b).

(2) If a batch front-end process vent or aggregate batch vent stream is combined with a continuous front-end process vent prior to the combined vent stream being routed to a recovery device, the TRE index value for the combined vent stream shall be calculated at the exit of the last recovery device. The TRE shall be calculated during periods when one or more batch emission episodes are occurring that result in the highest organic HAP emission rate (in the combined vent stream that is being routed to the recovery device) that is achievable during the 6-month period that begins 3 months before and ends 3 months after the TRE calculation, without causing any of the situations described in paragraphs (o)(2)(i) through (o)(2)(iii) of this section to occur.

(i) Causing damage to equipment;

(ii) Necessitating that the owner or operator make product that does not meet an existing specification for sale to a customer; or

(iii) Necessitating that the owner or operator make product in excess of demand.

(3) If the combined vent stream described in paragraph (o)(2) of this section meets the requirements in paragraphs (o)(3)(i), (o)(3)(ii), and (o)(3)(iii) of this section, the combined vent stream shall be subject to the requirements for Group 1 process vents in §§ 63.113 through 63.118, except as otherwise provided in this section, as applicable. Performance tests for the combined vent stream shall be conducted at maximum representative operating conditions, as described in paragraph (o)(1) of this section.

(i) The TRE index value of the combined stream is less than or equal to 1.0;

(ii) The flow rate of the combined vent stream is greater than or equal to 0.005 standard cubic meter per minute; and

(iii) The total organic HAP concentration is greater than or equal to 50 parts per million by volume for the combined vent stream.

(4) If the combined vent stream described in paragraph (o)(2) of this section meets the requirements in paragraph (o)(4)(i), (ii), or (iii) of this section, the combined vent stream shall be subject to the requirements for Group 2 process vents in §§ 63.113 through 63.118, except as otherwise provided in this section, as applicable.

(i) The TRE index value of the combined vent stream is greater than 1.0;

(ii) The flow rate of the combined vent stream is less than 0.005 standard cubic meter per minute; or

(iii) The total organic HAP concentration is less than 50 parts per million by volume for the combined vent stream.

(5) If a batch front-end process vent or aggregate batch vent stream is combined with a Group 2 continuous front-end process vent, the owner or operator shall comply with the requirements in either paragraph (o)(5)(i) or (o)(5)(ii) of this section.

(i) The owner or operator shall comply with the requirements in §§ 63.113 through 63.118 for Group 1 process vents; or

(ii) The owner or operator shall comply with § 63.487(e)(2) for batch front-end process vents and aggregate batch vent streams.

(p) If any gas stream that originates outside of an affected source that is subject to this subpart is normally conducted through the same final recovery device as any continuous front-end process vent stream subject to this subpart, the combined vent stream shall comply with all requirements in §§ 63.113 through 63.118, except as otherwise provided in this section, as applicable.

(1) Instead of measuring the vent stream flow rate at the sampling site specified in § 63.115(b)(1), the sampling site for vent stream flow rate shall be prior to the final recovery device and prior to the point at which the gas stream that is not controlled under this subpart is introduced into the combined vent stream.

(2) Instead of measuring total organic HAP or TOC concentrations at the sampling site specified in § 63.115(c)(1), the sampling site for total organic HAP or TOC concentration shall be prior to the final recovery device and prior to the point at which the gas stream that is not controlled under this subpart is introduced into the combined vent stream.

(3) The efficiency of the final recovery device (determined according to paragraph (p)(4) of this section) shall be applied to the total organic HAP or TOC concentration measured at the sampling site described in paragraph (p)(2) of this section to determine the exit concentration. This exit concentration of total organic HAP or TOC shall then be used to perform the calculations outlined in § 63.115(d)(2)(iii) and § 63.115(d)(2)(iv), for the combined vent stream exiting the final recovery device.

(4) The efficiency of the final recovery device is determined by measuring the total organic HAP or TOC concentration using Method 18 or 25A, 40 CFR part 60, appendix A, at the inlet to the final recovery device after the introduction of any gas stream that is not controlled under this subpart, and at the outlet of the final recovery device.

(q) Group 1 halogenated continuous front-end process vents described in either paragraph (q)(1) or (q)(2) of this section are exempt from the requirements to control hydrogen halides and halogens from the outlet of combustion devices contained in § 63.113(a)(1)(ii) and § 63.113(c).

(1) Group 1 halogenated continuous front-end process vents at existing affected sources producing butyl rubber, halobutyl rubber, or ethylene propylene rubber using a solution process, if the conditions in paragraphs (q)(1)(i) and (ii) of this section are met. Group 1 halogenated continuous front-end process vents at new affected sources producing butyl rubber, halobutyl rubber, or ethylene propylene rubber using a solution process are not exempt from § 63.113(a)(1)(ii) and § 63.113(c).

(i) If the halogenated continuous front-end process vent stream was controlled by a combustion device prior to June 12, 1995; and

(ii) If the requirements of § 63.113(a)(2); § 63.113(a)(3); § 63.113(b) and the associated testing requirements in § 63.116; or § 63.11(b) and § 63.504(c) are met.

(2) Group 1 halogenated continuous front-end process vents at new and existing affected sources producing an elastomer using a gas-phased reaction process, provided that the requirements of § 63.113(a)(2); § 63.113(a)(3); § 63.113(b) and the associated testing requirements in § 63.116; or § 63.11(b) and § 63.504(c) are met.

(r) The compliance date for continuous front-end process vents subject to the provisions of this section is specified in § 63.481.

(s) *Internal combustion engines.* In addition to the three options for the control of a Group 1 continuous front-end process vent listed in § 63.113(a)(1) through (3), an owner or operator will be permitted to route emissions of organic HAP to an internal combustion engine, provided the conditions listed in paragraphs (s)(1) through (s)(5) of this section are met.

(1) The vent stream routed to the internal combustion engine shall not be a halogenated continuous front-end process vent stream.

(2) The organic HAP is introduced with the primary fuel.

(3) The internal combustion engine is operating at all times that organic HAP emissions are being routed to it. The owner or operator shall demonstrate that the internal combustion engine is operating by continuously monitoring the on/off status of the internal combustion engine.

(4) The owner or operator shall maintain hourly records verifying that the internal combustion engine was operating at all times that emissions were routed to it.

(5) The owner or operator shall include in the Periodic Report a report of all times that the internal combustion engine was not operating while emissions were being routed to it.

(6) If an internal combustion engine meeting the requirements of paragraphs (s)(1) through (5) of this section is used to comply with the provisions of § 63.113(a), the internal combustion engine is exempt from the source testing requirements of § 63.116.

(t) When the provisions of § 63.116(c)(3) and (c)(4) specify that Method 18, 40 CFR part 60, appendix A shall be used, Method 18 or Method 25A, 40 CFR part 60, appendix A may be used for the purposes of this subpart. The use of Method 25A, 40 CFR part 60, appendix A shall conform with the requirements in paragraphs (t)(1) and (t)(2) of this section.

(1) The organic HAP used as the calibration gas for Method 25A, 40 CFR part 60, appendix A shall be the single organic HAP representing the largest percent by volume of the emissions.

(2) The use of Method 25A, 40 CFR part 60, appendix A is acceptable if the response from the high-level calibration gas is at least 20 times the standard deviation of the response from the zero calibration gas when the instrument is zeroed on the most sensitive scale.

(u) In § 63.116(a), instead of the reference to § 63.11(b), the requirements in § 63.504(c) shall apply.

(v) When a combustion device is used to comply with the 20 parts per million by volume outlet concentration standard specified in § 63.113(a)(2), the correction to 3 percent oxygen is only required when supplemental combustion air is used to combust the emissions, for the purposes of this subpart. In addition, the correction to 3 percent oxygen specified in § 63.116(c)(3) and (c)(3)(iii) is only required when supplemental combustion air is used to combust the emissions, for the purposes of this subpart. Finally, when a combustion device is used to comply with the 20 parts per million by volume outlet concentration standard specified in § 63.113(a)(2), an owner or operator shall record and report the outlet concentration required in § 63.117(a)(4)(ii) and (a)(4)(iv) corrected to 3 percent oxygen when supplemental combustion air is used to combust the emissions, for the purposes of this subpart. When supplemental combustion air is not used to combust the emissions, an owner or operator may record and report the outlet concentration required in § 63.117(a)(4)(ii) and (a)(4)(iv) on an uncorrected basis or corrected to 3 percent oxygen, for the purposes of this subpart.

8. Section 63.486 is revised to read as follows:

§ 63.486 Batch front-end process vent provisions.

(a) *Batch front-end process vents.* Except as specified in paragraph (b) of this section, owners and operators of new and existing affected sources with batch front-end process vents shall comply with the requirements in §§ 63.487 through 63.492. The batch front-end process vent group status shall be determined in accordance with § 63.488. Owners or operators of affected sources with batch front-end process vents classified as Group 1 shall comply with the reference control technology requirements for Group 1 batch front-end process vents in § 63.487, the monitoring requirements in § 63.489, the performance test methods and procedures to determine compliance in § 63.490, the recordkeeping requirements in § 63.491, and the reporting requirements in § 63.492. Owners and operators of all Group 2 batch front-end process vents shall comply with the applicable reference control technology requirements in § 63.487, the applicable recordkeeping requirements in § 63.491, and the applicable reporting requirements in § 63.492.

(b) *Aggregate batch vent streams.* Aggregate batch vent streams, as defined in § 63.482, are subject to the control requirements specified in § 63.487(b), as well as the monitoring, testing, recordkeeping, and reporting requirements specified in §§ 63.489 through 63.492 for aggregate batch vent streams.

9. Section 63.487 is amended by:

a. Revising paragraph (a) introductory text;

b. Revising paragraph (a)(1)(i);

c. Revising paragraph (b) introductory text;

d. Revising paragraph (b)(1)(i);

e. Revising paragraph (b)(2);

f. Revising paragraphs (c)(1) and (c)(2);

g. Revising paragraph (e);

h. Revising paragraph (f);

i. Revising paragraph (g); and

j. Adding paragraph (h).

The revisions and additions read as follows:

§ 63.487 Batch front-end process vents—reference control technology.

(a) *Batch front-end process vents.* The owner or operator of an affected source with a Group 1 batch front-end process vent, as determined using the procedures in § 63.488, shall comply with the requirements of either paragraph (a)(1) or (a)(2) of this section. Compliance may be based on either organic HAP or TOC.

(1) * * *

(i) The owner or operator of the affected source hall comply with the requirements of § 63.504(c) for the flare.

* * * * *

(b) *Aggregate batch vent streams.* The owner or operator of an aggregate batch vent stream that contains one or more Group 1 batch front-end process vents shall comply with the requirements of either paragraph (b)(1) or (b)(2) of this section. Compliance may be based on either organic HAP or TOC.

(1) * * *

(i) The owner or operator of the affected source shall comply with the requirements of § 63.504(c) for the flare.

* * * * *

(2) For each aggregate batch vent stream, reduce organic HAP emissions by 90 weight percent or to a concentration of 20 parts per million by volume, whichever is less stringent, on

a continuous basis using a control device. For combustion devices, the emission reduction or concentration shall be calculated on a dry basis, corrected to 3 percent oxygen.

(c) * * *

(1) If a combustion device is used to comply with paragraph (a)(2) or (b)(2) of this section for a halogenated batch front-end process vent or halogenated aggregate batch vent stream, the emissions exiting the combustion device shall be ducted to a halogen reduction device that reduces overall emissions of hydrogen halides and halogens by at least 99 percent before discharge to the atmosphere.

(2) A halogen reduction device may be used to reduce the halogen atom mass emission rate to less than 3,750 kg/yr for batch front-end process vents or aggregate batch vent streams and thus make the batch front-end process vent or aggregate batch vent stream nonhalogenated. The nonhalogenated batch front-end process vent or aggregate batch vent stream shall then comply with the requirements of either paragraph (a) or (b) of this section, as appropriate.

* * * * *

(e) *Combination of batch front-end process vents or aggregate batch vent streams with continuous front-end process vents.* If a batch front-end process vent or aggregate batch vent stream is combined with a continuous front-end process vent, the owner or operator shall determine whether the combined vent stream is subject to the provisions of §§ 63.486 through 63.492 according to paragraphs (e)(1) and (e)(2) of this section.

(1) A batch front-end process vent or aggregate batch vent stream combined with a continuous front-end process vent stream is not subject to the provisions of §§ 63.486 through 63.492, if the requirements in paragraph (e)(1)(i) and in either paragraph (e)(1)(ii) or (e)(1)(iii) are met.

(i) The only emissions to the atmosphere from the batch front-end process vent or aggregate batch vent stream prior to being combined with the continuous front-end process vent are from equipment subject to § 63.502.

(ii) The batch front-end vent stream or aggregate batch vent stream is combined with a Group 1 continuous front-end process vent stream prior to the combined vent stream being routed to a control device. In this paragraph (e)(1)(ii), the definition of control device as it relates to continuous front-end process vents shall be used. Furthermore, the combined vent stream discussed in this paragraph (e)(1)(ii) shall be subject to § 63.485(o)(1).

(iii) The batch front-end process vent or aggregate batch vent stream is combined with a continuous front-end process vent stream prior to being routed to a recovery device. In this paragraph (e)(1)(iii), the definition of recovery device as it relates to continuous front-end process vents shall be used. Furthermore, the combined vent stream discussed in this paragraph (e)(1)(iii) shall be subject to § 63.485(o)(2).

(2) If the batch front-end process vent or aggregate batch vent stream is combined with a Group 2 continuous front-end process vent, the group status of the batch front-end process vent shall be determined prior to its combination with the Group 2 continuous front-end process vent, in accordance with § 63.488, and the combined vent stream shall be subject to the requirements for aggregate batch vent streams in §§ 63.486 through 63.492.

(f) *Group 2 batch front-end process vents with annual emissions greater than or equal to the level specified in § 63.488(d).* The owner or operator of a Group 2 batch front-end process vent with annual emissions greater than or equal to the level specified in § 63.488(d) shall comply with the provisions of paragraph (f)(1), (f)(2), or (h) of this section.

(1) The owner or operator shall comply with the requirements in paragraphs (f)(1)(i) through (f)(1)(iv) of this section.

(i) The owner or operator shall establish a batch mass input limitation that ensures that the Group 2 batch front-end process vent does not become a Group 1 batch front-end process vent.

(ii) Over the course of the affected source's ''year,'' as reported in the Notification of Compliance Status in accordance with § 63.506(e)(5)(iv), the owner or operator shall not charge a mass of HAP or material to the batch unit operation that is greater than the level established as the batch mass input limitation.

(iii) The owner or operator of an affected source shall comply with the recordkeeping requirements in § 63.491(d)(2), and the reporting requirements in § 63.492(a)(3), (b) and (c).

(iv) The owner or operator of an affected source shall comply with § 63.488(i) when process changes are made.

(2) Comply with the requirements of this subpart for Group 1 batch front-end process vents.

(g) *Group 2 batch front-end process vents with annual emissions less than the level specified in § 63.488(d).* The owner or operator of a Group 2 batch front-end process vent with annual organic HAP emissions less than the level specified in § 63.488(d), shall comply with paragraph (g)(1), (g)(2), (g)(3), or (g)(4) of this section.

(1) The owner or operator of the affected source shall comply with the requirements in paragraphs (g)(1)(i) through (g)(1)(iv) of this section.

(i) The owner or operator shall establish a batch mass input limitation that ensures emissions do not exceed the appropriate level specified in § 63.488(d).

(ii) Over the course of the affected source's ''year,'' as reported in the Notification of Compliance Status in accordance with § 63.506(e)(5)(iv), the owner or operator shall not charge a mass of HAP or material to the batch unit operation that is greater than the level established as the batch mass input limitation.

(iii) The owner or operator of the affected source shall comply with the recordkeeping requirements in § 63.491(d)(1), and the reporting requirements in § 63.492(a)(2), (b), and (c).

(iv) The owner or operator of the affected source shall comply with § 63.488(i) when process changes are made.

(2) Comply with the requirements of paragraph (f)(1) of this section;

(3) Comply with the requirements of paragraph (f)(2) of this section; or

(4) Comply with the requirements of paragraph (h) of this section.

(h) Owners or operators of Group 2 batch front-end process vents are not required to establish a batch mass input limitation if the batch front-end process vent is Group 2 at the conditions specified in paragraphs (h)(1) and (h)(2) of this section and if the owner or operator complies with the recordkeeping provisions in §§ 63.491(a)(1) through (3), 63.491(a)(9), and 63.491(a)(4) through (6) as applicable, and the reporting requirements in § 63.492(a)(5) and (6) and (b).

(1) Emissions for the single highest-HAP recipe (considering all products that are produced in the batch unit operation) are used in the group determination; and

(2) The group determination assumes that the batch unit operation is operating at the maximum design capacity of the EPPU for 12 months.

10. Section 63.488 is amended by:

a. Revising paragraph (a)(1);

b. Revising paragraph (b) introductory text;

c. Revising paragraphs (b)(1) through (b)(3);

d. Revising paragraph (b)(4)(i) introductory text;
e. Revising paragraphs (b)(4)(i)(A) through (b)(4)(i)(D);
f. Revising paragraph (b)(4)(ii)(B)(*1*);
g. Revising paragraph (b)(4)(iii);
h. Revising paragraph (b)(5) introductory text;
i. Revising paragraphs (b)(5)(i) and (b)(5)(ii);
j. Revising paragraph (b)(5)(iii) introductory text;
k. Revising paragraphs (b)(5)(iii)(A) and (b)(5)(iii)(B);
l. Revising paragraph (b)(5)(iv);
m. Revising paragraph (b)(5)(v) introductory text;
n. Revising paragraph (b)(5)(v)(A);
o. Revising paragraph (b)(6);
p. Revising paragraph (d);
q. Revising paragraph (e) introductory text;
r. Revising paragraph (e)(1) introductory text;
s. Revising paragraph (e)(1)(i);
t. Revising paragraph (e)(1)(iii);
u. Revising paragraphs (e)(2) and (e)(3);
v. Revising paragraph (g);
w. Revising paragraph (h)(1) introductory text;
x. Revising paragraphs (h)(1)(iii) and (h)(1)(iv);
y. Revising paragraph (h)(2);
z. Revising paragraph (i) introductory text;
aa. Revising paragraphs (i)(1) through (i)(3); and
bb. Adding paragraph (b)(9).

The revisions and additions read as follows:

§ 63.488 Methods and procedures for batch front-end process vent group determination.

(a) * * *

(1) The procedures specified in paragraphs (b) through (g) shall be followed to determine the group status of each batch front-end process vent. This determination shall be made in accordance with either paragraph (a)(1)(i) or (a)(1)(ii) of this section.

(i) An owner or operator may choose to determine the group status of a batch front-end process vent based on the expected mix of products. For each product, emission characteristics of the single highest-HAP recipe, as defined in paragraph (a)(1)(iii) of this section, for that product, shall be used in the procedures in paragraphs (b) through (i) of this section.

(ii) An owner or operator may choose to determine the group status of a batch front-end process vent based on annualized production of the single highest-HAP recipe, as defined in paragraph (a)(1)(iii) of this section, considering all products produced or processed in the batch unit operation. The annualized production of the highest-HAP recipe shall be based exclusively on the production of the single highest-HAP recipe of all products produced or processed in the batch unit operation for a 12 month period. The production level used may be the actual production rate. It is not necessary to assume a maximum production rate (*i.e.,* 8,760 hours per year at maximum design production).

(iii) The single highest-HAP recipe for a product means the recipe of the product with the highest total mass of HAP charged to the reactor during the production of a single batch of product.

* * * * *

(b) *Determination of annual emissions.* The owner or operator shall calculate annual uncontrolled TOC or organic HAP emissions for each batch front-end process vent using the methods described in paragraphs (b)(1) through (b)(8) of this section. To estimate emissions from a batch emissions episode, owners or operators may use either the emissions estimation equations in paragraphs (b)(1) through (b)(4) of this section, or direct measurement as specified in paragraph (b)(5) of this section. Engineering assessment may also be used to estimate emissions from a batch emission episode, but only under the conditions described in paragraph (b)(6) of this section. In using the emissions estimation equations in paragraphs (b)(1) through (b)(4) of this section, individual component vapor pressure and molecular weight may be obtained from standard references. Methods to determine individual HAP partial pressures in multicomponent systems are described in paragraph (b)(9) of this section. Other variables in the emissions estimation equations may be obtained through direct measurement, as defined in paragraph (b)(5) of this section, through engineering assessment, as defined in paragraph (b)(6)(ii) of this section, by process knowledge, or by any other appropriate means. Assumptions used in determining these variables must be documented. Once emissions for the batch emission episode have been determined using either the emissions estimation equations, direct measurement, or engineering assessment, emissions from a batch cycle shall be calculated in accordance with paragraph (b)(7) of this section, and annual emissions from the batch front-end process vent shall be calculated in accordance with paragraph (b)(8) of this section.

(1) TOC or organic HAP emissions from the purging of an empty vessel shall be calculated using Equation 1. This equation does not take into account evaporation of any residual liquid in the vessel.

$$E_{episode} = \frac{(V_{ves})(P)(MW_{WAVG})}{RT}\left(1 - 0.37^{m}\right) \qquad \text{[Eq. 1]}$$

Where:

$E_{episode}$ = Emissions, kg/episode.
V_{ves} = Volume of vessel, m^3.
P = TOC or total organic HAP partial pressure, kPa.
MW_{WAVG} = Weighted average molecular weight of TOC or organic HAP in vapor, determined in accordance with paragraph (b)(4)(i)(D) of this section, kg/kmol.
R = Ideal gas constant, 8.314 $m^3 \cdot kPa/kmol \cdot °K$.
T = Temperature of vessel vapor space, °K.
m = Number of volumes of purge gas used.

(2) TOC or organic HAP emissions from the purging of a filled vessel shall be calculated using Equation 2.

$$E_{episode} = \frac{(y)(V_{dr})(P)^2(MW_{WAVG})}{RT\left(P - \sum_{i=1}^{n} P_i x_i\right)}(T_m) \qquad \text{[Eq. 2]}$$

Where:

$E_{episode}$ = Emissions, kg/episode.

y = Saturated mole fraction of all TOC or organic HAP in vapor phase.

V_{dr} = Volumetric gas displacement rate, m^3/min.

P = Pressure in vessel vapor space, kPa.

MW_{WAVG} = Weighted average molecular weight of TOC or organic HAP in vapor, determined in accordance with paragraph (b)(4)(i)(D) of this section, kg/kmol.

R = Ideal gas constant, 8.314 m^3·kPa/kmol·°K.

T = Temperature of vessel vapor space, °K.

P_i = Vapor pressure of TOC or individual organic HAP i, kPa.

x_i = Mole fraction of TOC or organic HAP i in the liquid.

n = Number of organic HAP in stream. Note: Summation is not applicable if TOC emissions are being estimated.

T_m = Minutes/episode.

(3) Emissions from vapor displacement due to transfer of material into or out of a vessel shall be calculated using Equation 3.

$$E_{episode} = \frac{(y)(V)(P)(MW_{WAVG})}{RT} \qquad \text{[Eq. 3]}$$

Where:

$E_{episode}$ = Emissions, kg/episode.

y = Saturated mole fraction of all TOC or organic HAP in vapor phase.

V = Volume of gas displaced from the vessel, m^3.

P = Pressure of vessel vapor space, kPa.

MW_{WAVG} = Weighted average molecular weight of TOC or organic HAP in vapor, determined in accordance with paragraph (b)(4)(i)(D) of this section, kg/kmol.

R = Ideal gas constant, 8.314 m^3·kPa/kmol·°K.

T = Temperature of vessel vapor space, °K.

(4) * * *

(i) If the final temperature to which the vessel contents is heated is lower than 50 K below the boiling point of the HAP in the vessel, then emissions shall be calculated using the equations in paragraphs (b)(4)(i)(A) through (b)(4)(i)(D) of this section.

(A) Emissions caused by heating of a vessel shall be calculated using Equation 4. The assumptions made for this calculation are atmospheric pressure of 760 mm Hg and the displaced gas is always saturated with VOC vapor in equilibrium with the liquid mixture.

$$E_{episode} = \left[\frac{\sum_{i=1}^{n} (P_i)_{T1}}{101.325 - \sum_{i=1}^{n} (P_i)_{T1}} + \frac{\sum_{i=1}^{n} (P_i)_{T2}}{101.325 - \sum_{i=1}^{n} (P_i)_{T2}} \right] * (\Delta\eta) \left[\frac{(MW_{WAVG,T1}) + (MW_{WAVG,T2})}{2} \right] \qquad \text{[Eq. 4]}$$

Where:

$E_{episode}$ = Emissions, kg/episode.

$(P_i)_{T1}$, $(P_i)_{T2}$ = Partial pressure (kPa) TOC or each organic HAP in the vessel headspace at initial (T1) and final (T2) temperature.

n = Number of organic HAP in stream. Note: Summation is not applicable if TOC emissions are being estimated.

$\Delta\eta$ = Number of kilogram-moles (kg-moles) of gas displaced, determined in accordance with paragraph (b)(4)(i)(B) of this section.

101.325 = Constant, kPa.

$(MW_{WAVG,T1})$, $(MW_{WAVG,T2})$ = Weighted average molecular weight of TOC or total organic HAP in the displaced gas stream, determined in accordance with paragraph (b)(4)(i)(D) of this section.

(B) The moles of gas displaced, $\Delta\eta$, is calculated using equation 5.

$$\Delta\eta = \frac{V_{fs}}{R} \left[\left(\frac{Pa_1}{T_1} \right) - \left(\frac{Pa_2}{T_2} \right) \right] \qquad \text{[Eq. 5]}$$

Where:

$\Delta\eta$ = Number of kg-moles of gas displaced.

V_{fs} = Volume of free space in the vessel, m^3.

R = Ideal gas constant, 8.314 m^3•kPa/kmol•K.

Pa_1 = Initial noncondensible gas partial pressure in the vessel, kPa.

Pa_2 = Final noncondensible gas partial pressure, kPa.

T_1 = Initial temperature of vessel, K.

T_2 = Final temperature of vessel, K.

(C) The initial and final pressure of the noncondensible gas in the vessel shall be calculated using equation 6.

$$Pa = 101.325 - \sum_{i=1}^{n} (P_i)_T \qquad \text{[Eq. 6]}$$

Where:

Pa = Initial or final partial pressure of noncondensible gas in the vessel headspace, kPa.

101.325 = Constant, kPa.

$(P_i)_T$ = Partial pressure of TOC or each organic HAP i in the vessel headspace, kPa, at the initial or final temperature (T_1 or T_2).

n = Number of organic HAP in stream. Note: Summation is not applicable if TOC emissions are being estimated.

(D) The weighted average molecular weight of TOC or organic HAP in the displaced gas, MW_{WAVG}, shall be calculated using equation 7:

$$MW_{WAVG} = \frac{\sum_{i-1}^{n} (\text{mass of C})_i \ (\text{molecular weight of C})_i}{\sum_{i=1}^{n} (\text{mass of C})_i} \qquad \text{[Eq. 7]}$$

Where:

c = TOC or organic HAP component

n = Number of TOC or organic HAP components in stream.

(ii) * * *

(B) * * *

(*1*) If the final temperature of the heatup is at or lower than 5 K below the boiling point, the final temperature for the last increment shall be the final temperature for the heatup, even if the last increment is less than 5 K.

* * * * *

(iii) If the vessel is operating with a condenser, and the vessel contents are heated to the boiling point, the primary condenser is considered part of the process, as described in § 63.488(a)(2). Emissions shall be calculated as the sum of Equation 4, which calculates emissions due to heating the vessel contents to the temperature of the gas exiting the condenser, and Equation 3, which calculates emissions due to the displacement of the remaining saturated noncondensible gas in the vessel. The final temperature in Equation 4 shall be set equal to the exit gas temperature of the condenser. Equation 3 shall be used as written below in Equation 3a, using free space volume, and T_2 is set equal to the condenser exit gas temperature.

$$E_{episode} = \frac{(y_i)(V_{fs})(P_T)(MW_{WAVG})}{(R)(T)} \qquad \text{[Eq. 3a]}$$

Where:

$E_{episode}$ = Emissions, kg/episode.

y_i = Saturated mole fraction of all TOC or organic HAP in the vapor phase.

V_{fs} = Volume of the free space in the vessel, m^3.

P_T = Pressure of the vessel vapor space, kPa.

MW_{WAVG} = Weighted average molecular weight of TOC or organic HAP in vapor, determined in accordance with paragraph (b)(4)(i)(D) of this section.

R = Ideal gas constant, 8.314 m^3•kPa/kmol•K.

T = Temperature of condenser exit stream K.

(5) The owner or operator may estimate annual emissions for a batch emission episode by direct measurement. If direct measurement is used, the owner or operator shall either perform a test for the duration of a representative batch emission episode or perform a test during only those periods of the batch emission episode for which the emission rate for the entire episode can be determined or for which the emissions are greater than the average emission rate of the batch emission episode. The owner or operator choosing either of these options shall develop an emission profile for the entire batch emission episode, based on either process knowledge or test data collected, to demonstrate that test periods are representative. Examples of information that could constitute process knowledge include calculations based on material balances and process stoichiometry. Previous test results may be used provided the results are still relevant to the current batch front-end process vent conditions. Performance tests shall follow the procedures specified in paragraphs (b)(5)(i) through (b)(5)(iii) of this section. The procedures in either paragraph (b)(5)(iv) or (b)(5)(v) of this section shall be used to calculate the emissions per batch emission episode.

(i) Method 1 or 1A, 40 CFR part 60, appendix A, as appropriate, shall be used for selection of the sampling sites if the flow measuring device is a pitot tube. No traverse is necessary when Method 2A or 2D, 40 CFR part 60, appendix A is used to determine gas stream volumetric flow rate.

(ii) Annual average batch vent flow rate shall be determined as specified in paragraph (e) of this section.

(iii) Method 18 or Method 25A, of 40 CFR part 60, appendix A, shall be used to determine the concentration of TOC or organic HAP, as appropriate. The use of Method 25A, 40 CFR part 60, appendix A shall conform with the requirements in paragraphs (b)(5)(iii)(A) and (b)(5)(iii)(B) of this section.

(A) The organic HAP used as the calibration gas for Method 25A, 40 CFR part 60, appendix A shall be the single organic HAP representing the largest percent by volume of the emissions.

(B) The use of Method 25A, 40 CFR part 60, appendix A is acceptable if the response from the high-level calibration gas is at least 20 times the standard deviation of the response from the zero calibration gas when the instrument is zeroed on the most sensitive scale.

(iv) If an integrated sample is taken over the entire batch emission episode to determine average batch vent concentration of TOC or total organic HAP, emissions shall be calculated using Equation 8.

$$E_{episode} = K\left[\sum_{j=1}^{n}(C_j)(M_j)\right] AFR\,(T_h) \qquad \text{[Eq. 8]}$$

Where:

$E_{episode}$ = Emissions, kg/episode

K = Constant, 2.494×10^{-6} $(ppmv)^{-1}$(gm-mole/scm) (kg/gm) (min/hr), where standard temperature is 20°C.

C_j = Average batch vent concentration of TOC or sample organic HAP component j of the gas stream for the batch emission episode, dry basis, ppmv.

M_j = Molecular weight of TOC or sample organic HAP component j of the gas stream, dry basis, gm/gm-mole.

AFR = Average batch vent flow rate of gas stream, dry basis, scmm.

T_h = Hours/episode
n = Number of organic HAP in stream. Note: Summation not applicable if TOC emissions are being estimated using a TOC concentration measured using Method 25A, 40 CFR part 60, appendix A.

(v) If grab samples are taken to determine the average batch vent concentration of TOC or total organic HAP, emissions shall be calculated according to paragraphs (b)(5)(v)(A) and (b)(5)(v)(B) of this section.

(A) For each measurement point, the emission rate shall be calculated using Equation 9.

$$E_{point} = K\left[\sum_{j=1}^{n} C_j M_j\right] FR \qquad [Eq. 9]$$

Where:
E_{point} = Emission rate for individual measurement point, kg/hr.
K = Constant, 2.494×10^{-6} (ppmv)$^{-1}$ (gm-mole/scm) (kg/gm) (min/hr), where standard temperature is 20°C.
C_j = Concentration of TOC or sample organic HAP component j of the gas stream, dry basis, ppmv.
M_j = Molecular weight of TOC or sample organic HAP component j of the gas stream, gm/gm-mole.
FR = Flow rate of gas stream for the measurement point, dry basis, scmm.
n = Number of organic HAP in stream. Note: Summation not applicable if TOC emissions are being estimated using a TOC concentration measured using Method 25A, 40 CFR part 60, appendix A.

* * * * *

(6) Engineering assessment may be used to estimate emissions from a batch emission episode, if the criteria in paragraph (b)(6)(i) are met. Data or other information used to demonstrate that the criteria in paragraph (b)(6)(i) of this section have been met shall be reported as specified in paragraph (b)(6)(iii) of this section. Paragraph (b)(6)(ii) of this section defines engineering assessment, for the purposes of estimating emissions from a batch emissions episode. All data, assumptions, and procedures used in an engineering assessment shall be documented.

(i) If the criteria specified in paragraph (b)(6)(i)(A), (B), or (C) are met for a specific batch emission episode, the owner or operator may use engineering assessment, as described in paragraph (b)(6)(ii) of this section, to estimate emissions from that batch emission episode, and the owner or operator is not required to use the emissions estimation equations described in paragraphs (b)(1) through (b)(4) of this section to estimate emissions from that batch emission episode.

(A) Previous test data, where the measurement of organic HAP or TOC emissions was an outcome of the test, show a greater than 20 percent discrepancy between the test value and the value estimated using the applicable equations in paragraphs (b)(1) through (b)(4) of this section. Paragraphs (b)(6)(i)(A)(*1*) and (*2*) of this section describe test data that will be acceptable under this paragraph (b)(6)(i)(A).

(*1*) Test data for the batch emission episode obtained during production of the product for which the demonstration is being made.

(*2*) Test data obtained for a batch emission episode from another process train, where the test data were obtained during production of the product for which the demonstration is being made. Test data from another process train may be used only if the owner or operator can demonstrate that the data are representative of the batch emission episode for which the demonstration is being made, taking into account the nature, size, operating conditions, production rate, and sequence of process steps (*e.g.*, reaction, distillation, etc.) of the equipment in the other process train.

(B) Previous test data obtained during the production of the product for which the demonstration is being made, for the batch emission episode with the highest organic HAP emissions on a mass basis, show a greater than 20 percent discrepancy between the test value and the value estimated using the applicable equations in paragraphs (b)(1) through (b)(4) of this section. If the criteria in this paragraph (b)(6)(i)(B) are met, then engineering assessment may be used for all batch emission episodes associated with that batch cycle for that batch unit operation.

(C) The owner or operator has requested approval to use engineering assessment to estimate emissions from a batch emissions episode. The request to use engineering assessment to estimate emissions from a batch emissions episode shall contain sufficient information and data to demonstrate to the Administrator that engineering assessment is an accurate means of estimating emissions for that particular batch emissions episode. The request to use engineering assessment to estimate emissions for a batch emissions episode shall be submitted in the Precompliance Report required under § 63.506(e)(3).

(ii) Engineering assessment includes, but is not limited to, the following:

(A) Previous test results, provided the test was representative of current operating practices.

(B) Bench-scale or pilot-scale test data obtained under conditions representative of current process operating conditions.

(C) Flow rate, TOC emission rate, or organic HAP emission rate specified or implied within a permit limit applicable to the batch front-end process vent.

(D) Design analysis based on accepted chemical engineering principles, measurable process parameters, or physical or chemical laws or properties. Examples of analytical methods include, but are not limited to:

(*1*) Use of material balances;

(*2*) Estimation of flow rate based on physical equipment design, such as pump or blower capacities;

(*3*) Estimation of TOC or organic HAP concentrations based on saturation conditions; and

(*4*) Estimation of TOC or organic HAP concentrations based on grab samples of the liquid or vapor.

(iii) Data or other information used to demonstrate that the criteria in paragraph (b)(6)(i) of this section have been met shall be reported as specified in paragraphs (b)(6)(iii)(A) and (b)(6)(iii)(B) of this section.

(A) Data or other information used to demonstrate that the criteria in paragraph (b)(6)(i)(A) or (b)(6)(i)(B) of this section have been met shall be reported in the Notification of Compliance Status, as required in § 63.492(a)(6).

(B) The request for approval to use engineering assessment to estimate emissions from a batch emissions episode as allowed under paragraph (b)(6)(i)(C) of this section, and sufficient data or other information for demonstrating to the Administrator that engineering assessment is an accurate means of estimating emissions for that particular batch emissions episode shall be submitted with the Precompliance Report, as required in § 63.506(e)(3).

* * * * *

(9) Individual HAP partial pressures in multicomponent systems shall be determined using the appropriate method specified in paragraphs (b)(9)(i) through (b)(9)(iii) of this section.

(i) If the components are miscible, use Raoult's law to calculate the partial pressures;

(ii) If the solution is a dilute aqueous mixture, use Henry's law constants to calculate partial pressures;

(iii) If Raoult's law or Henry's law are not appropriate or available, the owner or operator may use any of the options in paragraphs (b)(9)(iii)(A), (B), or (C) of this section.

(A) Experimentally obtained activity coefficients, Henry's law constants, or solubility data;

(B) Models, such as group-contribution models, to predict activity coefficients; or

(C) Assume the components of the system behave independently and use the summation of all vapor pressures from the HAP as the total HAP partial pressure.

* * * * *

(d) *Minimum emission level exemption.* A batch front-end process vent with annual emissions of TOC or organic HAP less than 11,800 kg/yr is considered a Group 2 batch front-end process vent and the owner or operator of that batch front-end process vent shall comply with the requirements in § 63.487(f) or (g). Annual emissions of TOC or organic HAP are determined at the exit of the batch unit operation, as described in paragraph (a)(2) of this section, and are determined as specified in paragraph (b) of this section. The owner or operator of that batch front-end process vent is not required to comply with the provisions in paragraphs (e) through (g) of this section.

(e) *Determination of average batch vent flow rate and annual average batch vent flow rate.* The owner or operator shall determine the average batch vent flow rate for each batch emission episode in accordance with one of the procedures provided in paragraphs (e)(1) through (e)(2) of this section. The annual average batch vent flow rate for a batch front-end process vent shall be calculated as specified in paragraph (e)(3) of this section.

(1) Determination of the average batch vent flow rate for a batch emission episode by direct measurement shall be made using the procedures specified in paragraphs (e)(1)(i) through (e)(1)(iii) of this section.

(i) The vent stream volumetric flow rate (FR_i) for a batch emission episode, in scmm at 20°C, shall be determined using Method 2, 2A, 2C, or 2D of 40 CFR part 60, appendix A, as appropriate.

* * * * *

(iii) The average batch vent flow rate for a batch emission episode shall be calculated using Equation 13.

Where:

$$AFR_{episode} = \frac{\sum_{i=1}^{n} FR_i}{n} \qquad \text{[Eq. 13]}$$

$AFR_{episode}$ = Average batch vent flow rate for the batch emission episode, scmm.

FR_i = Flow rate for individual measurement i, scmm.

n = Number of flow rate measurements taken during the batch emission episode.

(2) The average batch vent flow rate for a batch emission episode may be determined by engineering assessment, as defined in paragraph (b)(6)(i) of this section. All data, assumptions, and procedures used shall be documented.

(3) The annual average batch vent flow rate for a batch front-end process vent shall be calculated using Equation 14.

$$AFR = \frac{\sum_{i=1}^{n} (DUR_i)(AFR_{episode,\,i})}{\sum_{i=1}^{n} (DUR_i)} \qquad \text{[Eq. 14]}$$

Where:

AFR = Annual average batch vent flow rate for the batch front-end process vent, scmm.

DUR_i = Duration of type i batch emission episodes annually, hr/yr.

$AFR_{episode,i}$ = Average batch vent flow rate for type i batch emission episode, scmm.

n = Number of types of batch emission episodes venting from the batch front-end process vent.

* * * * *

(g) *Group 1/Group 2 status determination.* The owner or operator shall compare the cutoff flow rate, calculated in accordance with paragraph (f) of this section, with the annual average batch vent flow rate, determined in accordance with paragraph (e)(3) of this section. The group determination status for each batch front-end process vent shall be made using the criteria specified in paragraphs (g)(1) and (g)(2) of this section.

(1) If the cutoff flow rate is greater than or equal to the annual average batch vent flow rate of the stream, the batch front-end process vent is classified as a Group 1 batch front-end process vent.

(2) If the cutoff flow rate is less than the annual average batch vent flow rate of the stream, the batch front-end process vent is classified as a Group 2 batch front-end process vent.

(h) * * *

(1) The concentration of each organic compound containing halogen atoms (ppmv, by compound) for each batch emission episode shall be determined after the last recovery device (if any recovery devices are present), based on any one of the following procedures:

* * * * *

(iii) Average concentration of organic compounds containing halogens and hydrogen halides as measured by Method 26 or 26A of 40 CFR part 60, appendix A.

(iv) Any other method or data that has been validated according to the applicable procedures in Method 301, 40 CFR part 63, appendix A.

(2) The annual mass emissions of halogen atoms for a batch front-end process vent shall be calculated using Equation 16.

$$E_{halogen} = K\left[\sum_{j=1}^{n}\sum_{i=1}^{m}\left(C_{avg_j}\right)\left(L_{j,i}\right)\left(M_{j,i}\right)\right]AFR \qquad \text{[Eq. 16]}$$

Where:

$E_{halogen}$ = Mass of halogen atoms, dry basis, kg/yr.

K = Constant, 0.022 $(ppmv)^{-1}$ (kg-mole per scm) (min/yr), where standard temperature is 20°C.

AFR = Annual average batch vent flow rate of the batch front-end process vent, determined according to paragraph (e) of this section, scmm.

$M_{j,i}$ = Molecular weight of halogen

atom i in compound j, kg/kg-mole.

$L_{j,i}$ = Number of atoms of halogen i in compound j.

n = Number of halogenated compounds j in the batch front-end process vent.

m = Number of different halogens i in each compound j of the batch front-end process vent.

C_{avgj} = Annual average batch vent concentration of halogenated compound j in the batch front-end process vent, as determined by using Equation 17, dry basis, ppmv. where:

$$C_{avg_j} = \frac{\sum_{i=1}^{n}(DUR_i)(C_i)}{\sum_{i=1}^{n}(DUR_i)} \qquad \text{[Eq. 17]}$$

Where:

DUR_i = Duration of type i batch emission episodes annually, hr/yr.

C_i = Average batch vent concentration of halogenated compound j in type i batch emission episode, ppmv.

n = Number of types of batch emission episodes venting from the batch front-end process vent.

* * * * *

(i) *Process changes affecting Group 2 batch front-end process vents.* Whenever process changes, as described in paragraph (i)(1) of this section, are made that affect one or more Group 2 batch front-end process vents and that could reasonably be expected to change one or more Group 2 batch front-end process vents to Group 1 batch front-end process vents or that could reasonably be expected to reduce the batch mass input limitation for one or more Group 2 batch front-end process vents, the owner or operator of the affected source shall comply with paragraphs (i)(2) and (i)(3) of this section.

(1) Examples of process changes include the changes listed in paragraphs (i)(1)(i), (i)(1)(ii), and (i)(1)(iii) of this section.

(i) For all batch front-end process vents, examples of process changes include, but are not limited to, changes in feedstock type or catalyst type; or whenever there is replacement, removal, or modification of recovery equipment considered part of the batch unit operation as specified in paragraph (a)(2) of this section; or increases in production capacity or production rate. For purposes of this paragraph, process changes do not include: Process upsets; unintentional, temporary process changes; and changes that are within the margin of variation on which the original group determination was based.

(ii) For Group 2 batch front-end process vents where the group determination and batch mass input limitation are based on the expected mix of products, the situations described in paragraphs (i)(1)(ii)(A) and (B) of this section shall be considered to be process changes.

(A) The production of combinations of products not considered in establishing the batch mass input limitation.

(B) The production of a recipe of a product with a total mass of HAP charged to the reactor during the production of a single batch of product that is higher than the total mass of HAP for the recipe used as the single highest-HAP recipe for that product in the batch mass input limitation determination.

(iii) For Group 2 batch front-end process vents where the group determination and batch mass input limitation are based on the single highest-HAP recipe (considering all products produced or processed in the batch unit operation), the production of a recipe having a total mass of HAP charged to the reactor (during the production of a single batch of product) that is higher than the total mass of HAP for the highest-HAP recipe used in the batch mass input limitation determination shall be considered to be a process change.

(2) For each batch front-end process vent affected by a process change, the owner or operator shall redetermine the group status by repeating the procedures specified in paragraphs (b) through (g) of this section, as applicable. Alternatively, engineering assessment, as described in paragraph (b)(6)(i) of this section, may be used to determine the effects of the process change.

(3) Based on the results of paragraph (i)(2) of this section, owners or operators of affected sources shall comply with either paragraph (i)(3)(i), (ii), or (iii) of this section.

(i) If the group redetermination described in paragraph (i)(2) of this section indicates that a Group 2 batch front-end process vent has become a Group 1 batch front-end process vent as a result of the process change, the owner or operator of the affected source shall submit a report as specified in § 63.492(b) and shall comply with the Group 1 provisions in §§ 63.487 through 63.492 in accordance with § 63.480(i)(2)(ii) or (i)(2)(iii), as applicable.

(ii) If the redetermination described in paragraph (i)(2) of this section indicates that a Group 2 batch front-end process vent with annual emissions less than the applicable level specified in paragraph (d) of this section, and that is in compliance with § 63.487(g), now has annual emissions greater than or equal to the applicable level specified by paragraph (d) of this section but remains a Group 2 batch front-end process vent, the owner or operator of the affected source shall comply with the provisions in paragraphs (i)(3)(ii)(A) through (C) of this section.

(A) Redetermine the batch mass input limitation;

(B) Submit a report as specified in § 63.492(c); and

(C) Comply with § 63.487(f), beginning with the year following the submittal of the report submitted according to paragraph (i)(3)(ii)(B) of this section.

(iii) If the group redetermination described in paragraph (i)(2) of this section indicates no change in group status or no change in the relation of annual emissions to the levels specified in paragraph (d) of this section, the owner or operator of the affected source shall comply with paragraphs (i)(3)(iii)(A) and (i)(3)(iii)(B) of this section.

(A) The owner or operator shall redetermine the batch mass input limitation; and

(B) The owner or operator shall submit the new batch mass input limitation in accordance with § 63.492(c).

11. Section 63.489 is amended by:

a. Revising the section title;

b. Revising paragraph (a) introductory text;

c. Revising paragraph (a)(2);

d. Revising paragraph (b) introductory text;

e. Revising paragraph (b)(4) introductory text;

f. Revising paragraph (b)(4)(ii);

g. Revising paragraph (b)(7);

h. Revising paragraph (c) introductory text;

i. Revising paragraph (d) introductory text;

j. Revising paragraph (d)(2);

k. Revising paragraph (e)(1) introductory text;

l. Revising paragraph (e)(1)(ii);

m. Revising paragraph (e)(3); and

n. Removing paragraph (d)(3).

The revisions read as follows:

§ 63.489 Batch front-end process vents—monitoring equipment.

(a) *General requirements.* Each owner or operator of a batch front-end process vent or aggregate batch vent stream that uses a control device to comply with the requirements in § 63.487(a)(2) or § 63.487(b)(2) shall install the monitoring equipment specified in paragraph (b) of this section. All monitoring equipment shall be

installed, calibrated, maintained, and operated according to the manufacturer's specifications or other written procedures that provide adequate assurance that the equipment would reasonably be expected to monitor accurately.

* * * * *

(2) Except as otherwise provided in this subpart, the owner or operator shall operate control devices such that the daily average of monitored parameters, established as specified in paragraph (e) of this section, remains above the minimum level or below the maximum level, as appropriate.

(b) *Batch front-end process vent and aggregate batch vent stream monitoring equipment.* The monitoring equipment specified in paragraphs (b)(1) through (b)(8) of this section shall be installed as specified in paragraph (a) of this section. The parameters to be monitored are specified in Table 6 of this subpart.

* * * * *

(4) Where a scrubber is used with an incinerator, boiler, or process heater in concert with the combustion of halogenated batch front-end process vents or halogenated aggregate batch vent streams, the following monitoring equipment is required for the scrubber:

* * * * *

(ii) A flow measurement device equipped with a continuous recorder shall be located at the scrubber influent for liquid flow. Gas stream flow shall be determined using one of the procedures specified in paragraphs (b)(4)(ii)(A) through (b)(4)(ii)(C) of this section.

(A) The owner or operator may determine gas stream flow using the design blower capacity, with appropriate adjustments for pressure drop.

(B) If the scrubber is subject to regulations in 40 CFR parts 264 through 266 that have required a determination of the liquid to gas (L/G) ratio prior to the applicable compliance date for this subpart, the owner or operator may determine gas stream flow by the method that had been utilized to comply with those regulations. A determination that was conducted prior to the compliance date for this subpart may be utilized to comply with this subpart if it is still representative.

(C) The owner or operator may prepare and implement a gas stream flow determination plan that documents an appropriate method which will be used to determine the gas stream flow. The plan shall require determination of gas stream flow by a method which will at least provide a value for either a representative or the highest gas stream flow anticipated in the scrubber during representative operating conditions other than start-ups, shutdowns, or malfunctions. The plan shall include a description of the methodology to be followed and an explanation of how the selected methodology will reliably determine the gas stream flow, and a description of the records that will be maintained to document the determination of gas stream flow. The owner or operator shall maintain the plan as specified in § 63.506(a).

* * * * *

(7) Where a carbon adsorber is used, an integrating regeneration steam flow, nitrogen flow, or pressure monitoring device having an accuracy of ±10 percent of the flow rate, level, or pressure, or better, capable of recording the total regeneration steam flow or nitrogen flow, or pressure (gauge or absolute) for each regeneration cycle; and a carbon bed temperature monitoring device, capable of recording the carbon bed temperature after each regeneration and within 15 minutes of completing any cooling cycle are required.

* * * * *

(c) *Alternative monitoring parameters.* An owner or operator of a batch front-end process vent or aggregate batch vent stream may request approval to monitor parameters other than those required by paragraph (b) of this section. The request shall be submitted according to the procedures specified in § 63.492(e) and § 63.506(f). Approval shall be requested if the owner or operator:

* * * * *

(d) *Monitoring of bypass lines.* The owner or operator of a batch front-end process vent or aggregate batch vent stream using a vent system that contains bypass lines that could divert emissions away from a control device used to comply with § 63.487(a) or § 63.487(b) shall comply with either paragraph (d)(1) or (d)(2) of this section. Equipment such as low leg drains, high point bleeds, analyzer vents, open-ended valves or lines, and pressure relief valves needed for safety purposes are not subject to this paragraph (d).

* * * * *

(2) Secure the bypass line damper or valve in the non-diverting position with a car-seal or a lock-and-key type configuration. A visual inspection of the seal or closure mechanism shall be performed at least once every month to ensure that the damper or valve is maintained in the non-diverting position and emissions are not diverted through the bypass line. Records shall be generated as specified in § 63.491(e)(4).

(e) * * *

(1) For each parameter monitored under paragraph (b) or (c) of this section, the owner or operator shall establish a level, defined as either a maximum or minimum operating parameter as denoted in Table 7 of this subpart, that indicates proper operation of the control device. The level shall be established in accordance with the procedures specified in § 63.505. The level may be based upon a prior performance test conducted for determining compliance with a regulation promulgated by the EPA, and the owner or operator is not required to conduct a performance test under § 63.490, provided that the prior performance test meets the conditions of § 63.490(b)(3).

* * * * *

(ii) For aggregate batch vent streams using a control device to comply with § 63.487(b)(2), the established level shall reflect the emission reduction requirement of 90 percent specified in § 63.487(b)(2).

* * * * *

(3) The operating day shall be defined as part of establishing the parameter monitoring level and shall be submitted with the information in paragraph (e)(2) of this section. The definition of operating day shall specify the time(s) at which an operating day begins and ends. The operating day shall not exceed 24 hours.

12. Section 63.490 is amended by:

a. Revising paragraph (a);

b. Revising paragraph (b) introductory text;

c. Revising paragraph (b)(3);

d. Revising paragraph (b)(5);

e. Revising paragraph (c) introductory text;

f. Revising paragraph (c)(1)(i)(A);

g. Revising paragraph (c)(1)(i)(B) introductory text;

h. Revising paragraphs (c)(1)(i)(C) and (c)(1)(i)(D);

i. Revising paragraph (c)(1)(ii);

j. Revising paragraph (c)(1)(iii) introductory text;

k. Revising paragraph (c)(1)(iii)(A);

l. Revising paragraph (c)(1)(v);

m. Revising paragraph (c)(2) introductory text;

n. Revising paragraph (d)(1);

o. Revising paragraph (d)(2)(ii);

p. Revising paragraphs (d)(3) through (d)(5);

q. Revising paragraph (e);

r. Revising paragraph (f); and

s. Removing paragraph (b)(6).

The revisions read as follows:

§ 63.490 Batch front-end process vents—performance test methods and procedures to determine compliance.

(a) *Use of a flare.* When a flare is used to comply with § 63.487(a)(1) or § 63.487(b)(1), the owner or operator of an affected source shall comply with § 63.504(c).

(b) *Exceptions to performance tests.* An owner or operator is not required to conduct a performance test when a control device specified in paragraphs (b)(1) through (b)(5) of this section is used to comply with § 63.487(a)(2).

* * * * *

(3) A control device for which a performance test was conducted for determining compliance with a regulation promulgated by the EPA and the test was conducted using the same Methods specified in this section and either no deliberate process changes have been made since the test, or the owner or operator can demonstrate that the results of the performance test, with or without adjustments, reliably demonstrate compliance despite process changes.

* * * * *

(5) A hazardous waste incinerator for which the owner or operator has been issued a final permit under 40 CFR part 270 and complies with the requirements of 40 CFR part 264, subpart O, or has certified compliance with the interim status requirements of 40 CFR part 265, subpart O.

(c) *Batch front-end process vent testing and procedures for compliance with § 63.487(a)(2).* Except as provided in paragraph (a) or (b) of this section, an owner or operator using a control device to comply with § 63.487(a)(2) shall conduct a performance test using the procedures specified in paragraph (c)(1) of this section in order to determine the control efficiency of the control device. An owner or operator shall determine the percent reduction for the batch cycle using the control efficiency of the control device as specified in paragraphs (c)(2)(i) through (c)(2)(iii) of this section and the procedures specified in paragraph (c)(2) of this section. Compliance may be based on either total organic HAP or TOC. For purposes of this paragraph (c), the term ''batch emission episode'' shall have the meaning ''period of the batch emission episode selected for control,'' which may be the entire batch emission episode or may only be a portion of the batch emission episode.

(1) * * *

(i) * * *

(A) Alternatively, an owner or operator may choose to test only those periods of the batch emission episode during which the emission rate for the entire episode can be determined or during which the emissions are greater than the average emission rate of the batch emission episode. The owner or operator choosing either of these options shall develop an emission profile for the entire batch emission episode, based on either process knowledge or test data collected, to demonstrate that test periods are representative. Examples of information that could constitute process knowledge include calculations based on material balances and process stoichiometry. Previous test results may be used, provided the results are still relevant to the current batch front-end process vent conditions.

(B) Method 1 or 1A, 40 CFR part 60, appendix A, as appropriate, shall be used for selection of the sampling sites if the flow measuring device is a pitot tube, except that references to particulate matter in Method 1A do not apply for the purposes of this subpart. No traverse is necessary when Method 2A or 2D, 40 CFR part 60, appendix A is used to determine gas stream volumetric flow rate. Inlet sampling sites shall be located as specified in paragraphs (c)(1)(i)(B)(*1*) and (c)(1)(i)(B)(*2*) of this section. Outlet sampling sites shall be located at the outlet of the final control device prior to release to the atmosphere.

* * * * *

(C) Gas stream volumetric flow rate and/or average batch vent flow rate shall be determined as specified in § 63.488(e).

(D) Method 18 or Method 25A of 40 CFR part 60, appendix A, shall be used to determine the concentration of organic HAP or TOC, as appropriate. Alternatively, any other method or data that has been validated according to the applicable procedures in Method 301, 40 CFR part 63, appendix A, may be used. The use of Method 25A, 40 CFR part 60, appendix A shall conform with the requirements in paragraphs (c)(1)(i)(D)(*1*) and (c)(1)(i)(D)(*2*) of this section.

(*1*) The organic HAP used as the calibration gas for Method 25A, 40 CFR part 60, appendix A shall be the single organic HAP representing the largest percent by volume of the emissions.

(*2*) The use of Method 25A, 40 CFR part 60, appendix A is acceptable if the response from the high-level calibration gas is at least 20 times the standard deviation of the response from the zero calibration gas when the instrument is zeroed on the most sensitive scale.

(ii) If an integrated sample is taken over the entire batch emission episode to determine the average batch vent concentration of TOC or total organic HAP, emissions per batch emission episode shall be calculated using Equations 18 and 19.

$$E_{episode,inlet} = K\left[\sum_{j=1}^{n}\left(C_{j,inlet}\right)\left(M_j\right)\right]\left(AFR_{inlet}\right)\left(T_h\right) \qquad \text{[Eq. 18]}$$

$$E_{episode,outlet} = K\left[\sum_{j=1}^{n}\left(C_{j,outlet}\right)\left(M_j\right)\right]\left(AFR_{outlet}\right)\left(T_h\right) \qquad \text{[Eq. 19]}$$

Where:

$E_{episode}$ = Inlet or outlet emissions, kg/episode.

K = Constant, $2.494 \times 10^{minus;6}$ (ppmv) $^{minus;1}$ (gm-mole/scm) (kg/gm) (min/hr), where standard temperature is 20°C.

C_j = Average inlet or outlet concentration of TOC or sample organic HAP component j of the gas stream for the batch emission episode, dry basis, ppmv.

M_j = Molecular weight of TOC or sample organic HAP component j of the gas stream, gm/gm-mole.

AFR = Average inlet or outlet flow rate of gas stream for the batch emission episode, dry basis, scmm.

T_h = Hours/episode.

n = Number of organic HAP in stream. Note: Summation is not applicable if TOC emissions are being estimated using a TOC

concentration measured using Method 25A, 40 CFR part 60, appendix A.

(iii) If grab samples are taken to determine the average batch vent concentration of TOC or total organic HAP, emissions shall be calculated according to paragraphs (c)(1)(iii)(A) and (c)(1)(iii)(B) of this section.

(A) For each measurement point, the emission rates shall be calculated using Equations 20 and 21.

$$E_{point,inlet} = K\left[\sum_{j=1}^{n} C_j M_j\right] FR_{inlet} \qquad [Eq. 20]$$

$$E_{point,outlet} = K\left[\sum_{j=1}^{n} C_j M_j\right] FR_{outlet} \qquad [Eq. 21]$$

Where:

E_{point} = Inlet or outlet emission rate for the measurement point, kg/hr.

K = Constant, 2.494×10^{-6} $(ppmv)^{-1}$ (gm-mole/scm) (kg/gm) (min/hr), where standard temperature is 20° C.

C_j = Inlet or outlet concentration of TOC or sample organic HAP component j of the gas stream, dry basis, ppmv.

M_j = Molecular weight of TOC or sample organic HAP component j of the gas stream, gm/gm-mole.

FR = Inlet or outlet flow rate of gas stream for the measurement point, dry basis, scmm.

n = Number of organic HAP in stream. Note: Summation is not applicable if TOC emissions are being estimated using a TOC concentration measured using Method 25A, 40 CFR part 60, appendix A.

* * * * *

(v) If the batch front-end process vent entering a boiler or process heater with a design capacity less than 44 megawatts is introduced with the combustion air or as a secondary fuel, the weight-percent reduction of total organic HAP or TOC across the device shall be determined by comparing the TOC or total organic HAP in all combusted batch front-end process vents and primary and secondary fuels with the TOC or total organic HAP, respectively, exiting the combustion device.

(2) The percent reduction for the batch cycle shall be determined using Equation 25 and the control device efficiencies specified in paragraphs (c)(2)(i) through (c)(2)(iii) of this section. All information used to calculate the batch cycle percent reduction, including a definition of the batch cycle identifying all batch emission episodes, shall be recorded as specified in § 63.491(b)(2). This information shall include identification of those batch emission episodes, or portions thereof, selected for control.

$$\text{Percent Reduction} = \frac{\sum_{i=1}^{n} E_{unc} + \sum_{i=1}^{n} E_{inlet,con} - \sum_{i=1}^{n} (1-R)\left(E_{inlet,con}\right)}{\sum_{i=1}^{n} E_{unc} + \sum_{i=1}^{n} E_{inlet,con}} 100 \qquad [Eq. 25]$$

Where:

E_{unc} = Mass rate of TOC or total organic HAP for uncontrolled batch emission episode i, kg/hr.

$E_{inlet_{con}}$ = Mass rate of TOC or total organic HAP for controlled batch emission episode i at the inlet to the control device, kg/hr.

R = Control efficiency of control device as specified in paragraphs (c)(2)(i) through (c)(2)(iii) of this section.

n = Number of uncontrolled batch emission episodes, controlled batch emission episodes, and control devices. The value of n is not necessarily the same for these three items.

* * * * *

(d) * * *

(1) Sampling sites shall be located at the inlet and outlet of the scrubber or other halogen reduction device used to reduce halogen emissions in complying with § 63.487(c)(1) or at the outlet of the halogen reduction device used to reduce halogen emissions in complying with § 63.487(c)(2).

(2) * * *

(ii) Gas stream volumetric flow rate and/or average batch vent flow rate shall be determined as specified in § 63.488(e).

(3) To determine compliance with the percent reduction specified in § 63.487(c)(1), the mass emissions for any hydrogen halides and halogens present at the inlet of the scrubber or other halogen reduction device shall be summed together. The mass emissions of any hydrogen halides or halogens present at the outlet of the scrubber or other halogen reduction device shall be summed together. Percent reduction shall be determined by subtracting the outlet mass emissions from the inlet mass emissions and then dividing the result by the inlet mass emissions and multiplying by 100.

(4) To determine compliance with the emission limit specified in § 63.487(c)(2), the annual mass emissions for any hydrogen halides and halogens present at the outlet of the halogen reduction device and prior to any combustion device shall be summed together and compared to the emission limit specified in § 63.487(c)(2).

(5) The owner or operator may use any other method to demonstrate compliance if the method or data has been validated according to the applicable procedures of Method 301, 40 CFR part 63, appendix A.

(e) *Aggregate batch vent stream testing for compliance with § 63.487(b)(2).* Except as specified in paragraphs (e)(1) through (e)(3) of this section, owners or operators of aggregate batch vent streams complying with

§ 63.487(b)(2) shall conduct a performance test using the performance testing procedures for continuous front-end process vents in § 63.116(c).

(1) For the purposes of this subpart, when the provisions of § 63.116(c) specify that Method 18, 40 CFR part 60, appendix A shall be used, Method 18 or Method 25A, 40 CFR part 60, appendix A may be used. The use of Method 25A, 40 CFR part 60, appendix A shall conform with the requirements in paragraphs (e)(1)(i) and (e)(1)(ii) of this section.

(i) The organic HAP used as the calibration gas for Method 25A, 40 CFR part 60, appendix A shall be the single organic HAP representing the largest percent by volume of the emissions.

(ii) The use of Method 25A, 40 CFR part 60, appendix A is acceptable if the response from the high-level calibration gas is at least 20 times the standard deviation of the response from the zero calibration gas when the instrument is zeroed on the most sensitive scale.

(2) When § 63.116(c)(4) refers to complying with an emission reduction of 98 percent, for the purposes of this subpart, the 90 percent reduction requirement specified in § 63.487(b)(2) shall apply.

* * * * *

(f) *Batch mass input limitation.* The batch mass input limitation required by § 63.487(g)(1) shall be determined by the owner or operator such that annual emissions for the batch front-end process vent remain less than the level specified in § 63.488(d). The batch mass input limitation required by § 63.487(f)(1) shall be determined by the owner or operator such that annual emissions remain at a level that ensures that the batch front-end process vent remains a Group 2 batch front-end process vent, given the actual annual flow rate for that batch front-end process vent determined according to § 63.488(e)(3). The batch mass input limitation shall be determined using the same basis, as described in § 63.488(a)(1), used to make the group determination (*i.e.,* expected mix of products or highest-HAP recipe). The establishment of the batch mass input limitation is not dependent upon any past production or activity level.

(1) If the expected mix of products serves as the basis for the batch mass input limitation, the batch mass input limitation shall be determined based on any foreseeable combination of products that the owner or operator expects to manufacture.

(2) If the single highest-HAP recipe serves as the basis for the batch mass input limitation, the batch mass input limitation shall be determined based solely on the production of the single highest-HAP recipe, considering all products produced or processed in the batch unit operation.

13. Section 63.491 is amended by:

a. Revising paragraph (a) introductory text;

b. Revising paragraphs (a)(1) and (a)(2);

c. Revising paragraph (a)(3)(i);

d. Revising paragraph (a)(4);

e. Revising paragraphs (a)(7) through (a)(9);

f. Revising paragraph (b) introductory text;

g. Revising paragraphs (b)(1) and (b)(2);

h. Revising paragraphs (b)(3)(ii) and (b)(3)(iii);

i. Revising paragraph (b)(4)(iv);

j. Revising paragraphs (d)(1) and (d)(2);

k. Revising paragraph (e) introductory text;

l. Revising paragraphs (e)(1)(i) and (e)(1)(ii);

m. Revising paragraph (e)(2) introductory text;

n. Revising paragraphs (e)(2)(i) and (e)(2)(ii);

o. Revising paragraph (e)(3);

p. Revising paragraph (e)(4) introductory text;

q. Revising paragraph (e)(4)(i);

r. Revising paragraph (f);

s. Adding paragraph (g); and

t. Removing and reserving paragraph (e)(4)(ii).

The revisions and additions read as follows:

§ 63.491 Batch front-end process vents—recordkeeping requirements.

(a) *Group determination records for batch front-end process vents.* Except as provided in paragraphs (a)(7) and (a)(8) of this section, each owner or operator of an affected source shall maintain the records specified in paragraphs (a)(1) through (a)(6) of this section for each batch front-end process vent subject to the group determination procedures of § 63.488. Except for paragraph (a)(1) of this section, the records required to be maintained by this paragraph are limited to the information developed and used to make the group determination under §§ 63.488(b) through 63.488(g), as appropriate. If an owner or operator did not need to develop certain information (*e.g.,* annual average batch vent flow rate) to determine the group status, this paragraph does not require that additional information be developed. Paragraph (a)(9) of this section specifies the recordkeeping requirements for Group 2 batch front-end process vents that are exempt from the batch mass input limitation provisions, as allowed under § 63.487(h).

(1) An identification of each unique product that has emissions from one or more batch emission episodes venting from the batch front-end process vent, along with an identification of the single highest-HAP recipe for each product and the mass of HAP fed to the reactor for that recipe.

(2) A description of, and an emission estimate for, each batch emission episode, and the total emissions associated with one batch cycle, as described in either paragraph (a)(2)(i) or (a)(2)(ii) of this section, as appropriate.

(i) If the group determination is based on the expected mix of products, records shall include the emission estimates for the single highest-HAP recipe of each unique product identified in paragraph (a)(1) of this section that was considered in making the group determination under § 63.488.

(ii) If the group determination is based on the single highest-HAP recipe (considering all products produced or processed in the batch unit operation), records shall include the emission estimates for the single highest-HAP recipe.

(3) * * *

(i) For Group 2 batch front-end process vents, emissions shall be determined at the batch mass input limitation.

* * * * *

(4) The annual average batch vent flow rate for the batch front-end process vent as determined in accordance with § 63.488(e).

* * * * *

(7) If a batch front-end process vent is subject to § 63.487(a) or § 63.487(b), none of the records in paragraphs (a)(1) through (a)(6) of this section are required.

(8) If the total annual emissions from the batch front-end process vent during the group determination are less than the appropriate level specified in § 63.488(d), only the records in paragraphs (a)(1) through (a)(3) of this section are required.

(9) For each Group 2 batch front-end process vent that is exempt from the batch mass input limitation provisions because it meets the criteria of § 63.487(h), the records specified in paragraphs (a)(9)(i) and (ii) shall be maintained.

(i) Documentation of the maximum design capacity of the EPPU; and

(ii) The mass of HAP or material that can be charged annually to the batch unit operation at the maximum design capacity.

(b) *Compliance demonstration records.* Each owner or operator of a batch front-end process vent or aggregate batch vent stream complying with § 63.487(a) or (b), shall keep the following records, as applicable, readily accessible:

(1) The annual mass emissions of halogen atoms in the batch front-end process vent or aggregate batch vent stream determined according to the procedures specified in § 63.488(h).

(2) If the owner or operator of a batch front-end process vent has chosen to comply with § 63.487(a)(2), records documenting the batch cycle percent reduction as specified in § 63.490(c)(2).

(3) * * *

(ii) All visible emission readings, heat content determinations, flow rate measurements, and exit velocity determinations made during the compliance determination required by § 63.504(c); and

(iii) Periods when all pilot flames were absent.

(4) * * *

(iv) For a scrubber or other halogen reduction device following a combustion device to control halogenated batch front-end process vents or halogenated aggregate batch vent streams, the percent reduction of total hydrogen halides and halogens, as determined under § 63.490(d)(3) or the emission limit determined under § 63.490(d)(4).

* * * * *

(d) * * *

(1) The owner or operator of a Group 2 batch front-end process vent required to comply with § 63.487(g) shall keep the following records readily accessible:

(i) Records designating the established batch mass input limitation required by § 63.487(g)(1) and specified in § 63.490(f).

(ii) Records specifying the mass of HAP or material charged to the batch unit operation.

(2) The owner or operator of a Group 2 batch front-end process vent complying with § 63.487(f) shall keep the following records readily accessible:

(i) Records designating the established batch mass input limitation required by § 63.487(f)(1) and specified in § 63.490(f).

(ii) Records specifying the mass of HAP or material charged to the batch unit operation.

(e) *Controlled batch front-end process vent continuous compliance records.* Each owner or operator of a batch front-end process vent that has chosen to use a control device to comply with § 63.487(a) shall keep the following records readily accessible:

(1) * * *

(i) For flares, the records specified in Table 6 of this subpart shall be maintained in place of continuous records.

(ii) For carbon adsorbers, the records specified in Table 6 of this subpart shall be maintained in place of batch cycle daily averages.

(2) Records of the batch cycle daily average value of each continuously monitored parameter, except as provided in paragraphs (e)(2)(iii) of this section, as calculated using the procedures specified in paragraphs (e)(2)(i) and (e)(2)(ii) of this section.

(i) The batch cycle daily average shall be calculated as the average of all parameter values measured for an operating day during those batch emission episodes, or portions thereof, in the batch cycle that the owner or operator has selected to control.

(ii) Monitoring data recorded during periods of monitoring system breakdowns, repairs, calibration checks, and zero (low-level) and high-level adjustments shall not be included in computing the batch cycle daily averages. In addition, monitoring data recorded during periods of non-operation of the EPPU (or specific portion thereof) resulting in cessation of organic HAP emissions, or periods of start-up, shutdown, or malfunction shall not be included in computing the batch cycle daily averages.

* * * * *

(3) Hourly records of whether the flow indicator for bypass lines specified under § 63.489(d)(1) was operating and whether a diversion was detected at any time during the hour. Also, records of the times of all periods when the vent is diverted from the control device, or the flow indicator specified in § 63.489(d)(1) is not operating.

(4) Where a seal or closure mechanism is used to comply with § 63.489(d)(2), hourly records of whether a diversion was detected at any time are not required.

(i) For compliance with § 63.489(d)(2), the owner or operator shall record whether the monthly visual inspection of the seals or closure mechanism has been done, and shall record the occurrence of all periods when the seal mechanism is broken, the bypass line damper or valve position has changed, or the key for a lock-and-key type configuration has been checked out, and records of any car-seal that has been broken.

(ii) [Reserved.]

* * * * *

(f) *Aggregate batch vent stream continuous compliance records.* In addition to the records specified in paragraphs (b) and (c) of this section, each owner or operator of an aggregate batch vent stream using a control device to comply with § 63.487(b)(1) or (b)(2) shall keep the following records readily accessible:.

(1) Continuous records of the equipment operating parameters specified to be monitored under § 63.489(b) and listed in Table 6 of this subpart, as applicable, or specified by the Administrator in accordance with § 63.492(e), as allowed under § 63.489(c), with the exceptions listed in paragraphs (f)(1)(i) and (f)(1)(ii) of this section.

(i) For flares, the records specified in Table 6 of this subpart shall be maintained in place of continuous records.

(ii) For carbon adsorbers, the records specified in Table 6 of this subpart shall be maintained in place of daily averages.

(2) Records of the daily average value of each continuously monitored parameter for each operating day determined according to the procedures specified in § 63.506(d).

(3) For demonstrating compliance with the monitoring of bypass lines as specified in § 63.489(d), records as specified in paragraph (e)(3) or (e)(4) of this section, as appropriate.

(g) Documentation supporting the establishment of the batch mass input limitation shall include the information specified in paragraphs (g)(1) through (g)(5) of this section, as appropriate.

(1) Identification of whether the purpose of the batch mass input limitation is to comply with § 63.487(f)(1) or (g)(1).

(2) Identification of whether the batch mass input limitation is based on the single highest-HAP recipe (considering all products) or on the expected mix of products for the batch front-end process vent as allowed under § 63.488(a)(1).

(3) Definition of the operating year, for the purposes of determining compliance with the batch mass input limitation.

(4) If the batch mass input limitation is based on the expected mix of products, the owner or operator shall provide documentation that describes as many scenarios for differing mixes of products (*i.e.,* how many of each type of product) as the owner or operator desires the flexibility to accomplish. Alternatively, the owner or operator shall provide a description of the relationship among the mix of products that will allow a determination of compliance with the batch mass input limitation under any number of scenarios.

(5) The mass of HAP or material allowed to be charged to the batch unit operation per year under the batch mass input limitation.

14. Section 63.492 is amended by:

a. Revising paragraph (a) introductory text;

b. Revising paragraph (b);

c. Revising paragraph (c) introductory text;

d. Revising paragraph (c)(2);

e. Revising paragraph (d);

f.

Revising paragraph (e);

g. Revising paragraph (f);

h. Adding paragraphs (a)(5) and (a)(6); and

i. Removing paragraph (c)(3).

The revisions and additions read as follows:

§ 63.492 Batch front-end process vents—reporting requirements.

(a) The owner or operator of a batch front-end process vent or aggregate batch vent stream at an affected source shall submit the information specified in paragraphs (a)(1) through (a)(6) of this section, as appropriate, as part of the Notification of Compliance Status specified in § 63.506(e)(5).

* * * * *

(5) For each Group 2 batch front-end process vent that is exempt from the batch mass input limitation provisions because it meets the criteria of § 63.487(h), the information specified in § 63.491(a)(1) through (3), and the information specified in § 63.491(a)(4) through (6) as applicable, calculated at the conditions specified in § 63.487(h).

(6) When engineering assessment has been used to estimate emissions from a batch emissions episode and the criteria specified in § 63.488(b)(6)(i)(A) or (B) have been met, the owner or operator shall submit the information demonstrating that the criteria specified in § 63.488(b)(6)(i)(A) or (B) have been met as part of the Notification of Compliance Status required by § 63.506(e)(5).

(b) Whenever a process change, as defined in § 63.488(i)(1), is made that causes a Group 2 batch front-end process vent to become a Group 1 batch front-end process vent, the owner or operator shall notify the Administrator and submit a description of the process change within 180 days after the process change is made or with the next Periodic Report, whichever is later. The owner or operator of an affected source shall comply with the Group 1 batch front-end process vent provisions in §§ 63.486 through 63.492 in accordance with § 63.480(i)(2)(ii).

(c) Whenever a process change, as defined in § 63.488(i)(1), is made that causes a Group 2 batch front-end process vent with annual emissions less than the level specified in § 63.488(d) for which the owner or operator is required to comply with § 63.487(g) to have annual emissions greater than or equal to the level specified in § 63.488(d) but remains a Group 2 batch front-end process vent, or if a process change is made that requires the owner or operator to redetermine the batch mass input limitation as specified in § 63.488(i)(3), the owner or operator shall submit a report within 180 days after the process change is made or with the next Periodic Report, whichever is later. The following information shall be submitted:

* * * * *

(2) The batch mass input limitation determined in accordance with § 63.487(f)(1).

(d) The owner or operator is not required to submit a report of a process change if one of the conditions specified in paragraphs (d)(1) or (d)(2) of this section is met.

(1) The change does not meet the description of a process change in § 63.488(i).

(2) The redetermined group status remains Group 2 for an individual batch front-end process vent with annual emissions greater than or equal to the level specified in § 63.488(d) and the batch mass input limitation does not decrease, or a Group 2 batch front-end process vent with annual emissions less than the level specified in § 63.488(d) complying with § 63.487(g) continues to have emissions less than the level specified in § 63.488(d) and the batch mass input limitation does not decrease.

(e) If an owner or operator uses a control device other than those specified in § 63.489(b) and listed in Table 6 of this subpart or requests approval to monitor a parameter other than those specified in § 63.489(b) and listed in Table 6 of this subpart, the owner or operator shall submit a description of planned reporting and recordkeeping procedures, as specified in § 63.506(f), as part of the Precompliance Report as required under § 63.506(e)(3). The Administrator will specify appropriate reporting and recordkeeping requirements as part of the review of the Precompliance Report.

(f) Owners or operators of affected sources complying with § 63.489(d), shall comply with paragraph (f)(1) or (f)(2) of this section, as appropriate.

(1) Submit reports of the times of all periods recorded under § 63.491(e)(3) when the batch front-end process vent is diverted away from the control device through a bypass line, with the next Periodic Report.

(2) Submit reports of all occurrences recorded under § 63.491(e)(4) in which the seal mechanism is broken, the bypass line damper or valve position has changed, or the key to unlock the bypass line damper or valve was checked out, with the next Periodic Report.

15. Section 63.493 is revised to read as follows:

§ 63.493 Back-end process provisions.

Owners and operators of new and existing affected sources shall comply with the requirements in §§ 63.494 through 63.500. Owners and operators of affected sources whose only elastomer products are latex products, liquid rubber products, or products produced in a gas-phased reaction process are not subject to the provisions of §§ 63.494 through 63.500. If latex or liquid rubber products are produced in an affected source that also produces another elastomer product, the provisions of §§ 63.484 through 63.500 do not apply to the back-end operations dedicated to the production of one or more latex products or to the back-end operations during the production of a latex product. Section 63.494 contains residual organic HAP limitations. Compliance with these residual organic HAP limitations may be achieved by using either stripping technology, or by using control or recovery devices. If compliance with these limitations is achieved using stripping technology, the procedures to determine compliance are specified in § 63.495. If compliance with these limitations is achieved using control or recovery devices, the procedures to determine compliance are specified in § 63.496, and associated monitoring requirements are specified in § 63.497. Recordkeeping requirements are contained in § 63.498, and reporting requirements in § 63.499. Section 63.500 contains a limitation on carbon disulfide emissions from affected sources that produce styrene butadiene rubber using an emulsion process. Table 8 to this subpart contains a summary of compliance alternative requirements for these sections.

16. Section 63.494 is amended by:

a. Revising paragraph (a) introductory text;

b. Revising paragraphs (a)(1)(i), (a)(2)(i) and (a)(3)(i);

c. Revising paragraph (a)(4); and

d. Adding paragraph (d).

The revisions and additions read as follows:

§ 63.494 Back-end process provisions—residual organic HAP limitations.

(a) The monthly weighted average residual organic HAP content of all

grades of elastomer processed, measured after the stripping operation [or the reactor(s), if the plant has no stripper(s)] as specified in § 63.495(d), shall not exceed the limits provided in paragraphs (a)(1) through (a)(4) of this section, as applicable. Owners or operators of affected sources shall comply with the requirements of this paragraph using either stripping technology or control or recovery devices.

(1) * * *

(i) A monthly weighted average of 0.40 kg styrene per megagram (Mg) latex for existing affected sources; and

* * * * *

(2) * * *

(i) A monthly weighted average of 10 kg total organic HAP per Mg crumb rubber (dry weight) for existing affected sources; and

* * * * *

(3) * * *

(i) A monthly weighted average of 8 kg total organic HAP per Mg crumb rubber (dry weight) for existing affected sources; and

* * * * *

(4) There are no back-end process operation residual organic HAP limitations for neoprene, Hypalon™, nitrile-butadiene rubber, butyl rubber, halobutyl rubber, epichlorohydrin elastomer, and polysulfide rubber. There are also no back-end process operation residual organic HAP limitations for latex products, liquid rubber products, products produced in a gas-phased reaction process, styrene butadiene rubber produced by any process other than a solution or emulsion process, polybutadiene rubber produced by any process other than a solution process, or ethylene-propylene rubber produced by any process other than a solution process.

* * * * *

(d) If the owner or operator complies with the residual organic HAP limitations in paragraph (a) of this section using a flare, the owner or operator of an affected source shall comply with the requirements in § 63.504(c).

17. Section 63.495 is amended by:

a. Revising paragraphs (b)(2)(i) and (b)(2)(ii);

b. Revising paragraph (b)(5); and

c. Revising paragraph (f).

The revisions read as follows:

§ 63.495 Back-end process provisions—procedures to determine compliance using stripping technology.

* * * * *

(b) * * *

(2) * * *

(i) If a stripper operated in batch mode is used, at least one representative sample is to be taken from every batch of elastomer produced, at the location specified in paragraph (d) of this section, and identified by elastomer type and by the date and time the batch is completed.

(ii) If a stripper operated in continuous mode is used, at least one representative sample is to be taken each operating day. The sample is to be taken at the location specified in paragraph (d) of this section, and identified by elastomer type and by the date and time the sample was taken.

* * * * *

(5) The monthly weighted average shall be determined using the equation in paragraph (f) of this section. All samples taken and analyzed during the month shall be used in the determination of the monthly weighted average, except samples taken during periods of start-up, shutdown, or malfunction.

* * * * *

(f) The monthly weighted average residual organic HAP content shall be calculated using Equation 26.

$$HAPCONT_{avg,mo} = \frac{\sum_{i-1}^{n}(C_i)(P_i)}{P_{mo}} \qquad [Eq.\ 26]$$

Where:

$HAPCONT_{avg,mo}$ = Monthly weighted average organic HAP content for all rubber processed at the affected source, kg organic HAP per Mg latex or dry crumb rubber.

n = Number of samples in the month.

C_i = Residual organic HAP content of sample i, determined in accordance with paragraph (b)(3) or (c)(3) of this section, kg organic HAP per Mg latex or dry crumb rubber.

P_i = Weight of latex or dry crumb rubber represented by sample i.

P_{mo} = Weight of latex or dry crumb rubber (Mg) processed in the month.

18. Section 63.496 is amended by:

a. Revising paragraph (b) introductory text;

b. Revising paragraph (b)(5)(i);

c. Revising paragraph (b)(5)(iii);

d. Revising paragraph (b)(6)(iv);

e. Revising paragraph (b)(7) introductory text;

f. Revising paragraph (b)(7)(i);

g. Revising paragraph (b)(7)(iv);

h. Revising paragraph (b)(8) introductory text;

i. Revising paragraph (c)(1); and

j. Adding paragraph (b)(7)(vi).

The revisions and additions read as follows:

§ 63.496 Back-end process provisions—procedures to determine compliance using control or recovery devices.

* * * * *

(b) Compliance shall be demonstrated using the provisions in paragraphs (b)(1) through (b)(8) of this section, as applicable.

* * * * *

(5) * * *

(i) Method 1 or 1A of 40 CFR part 60, appendix A, as appropriate, shall be used for selection of the sampling sites. Sampling sites for inlet emissions shall be located as specified in paragraphs (b)(5)(i)(A) or (b)(5)(i)(B) of this section. Sampling sites for outlet emissions shall be located at the outlet of the control or recovery device.

(A) The inlet sampling site shall be located at the exit of the back-end process unit operation before any opportunity for emission to the atmosphere [with the exception of equipment in compliance with the requirements in §§ 63.502(a) through 63.502(m)], and before any control or recovery device.

(B) If back-end process vent streams are combined prior to being routed to control or recovery devices, the inlet sampling site may be for the combined stream, as long as there is no opportunity for emission to the atmosphere [with the exception of equipment in compliance with the requirements in §§ 63.502(a) through 63.502(m)] from any of the streams prior to being combined.

* * * * *

(iii) To determine the inlet and outlet total organic HAP concentrations, the owner or operator shall use Method 18 or Method 25A of 40 CFR part 60, appendix A. Alternatively, any other method or data that has been validated according to the applicable procedures in Method 301, 40 CFR part 63,

appendix A may be used. The minimum sampling time for each run shall be in accordance with paragraph (b)(1) of this section, during which either an integrated sample or grab samples shall be taken. If grab sampling is used, then the samples shall be taken at approximately equal intervals during the run, with the time between samples no greater than 15 minutes.

* * * * *

(6) * * *

(iv) The outlet total organic HAP emissions associated with the back-end process unit operation shall be calculated using Equation 30, as shown in paragraph (b)(8) of this section.

(7) An owner or operator is not required to conduct a source test to determine the outlet organic HAP emissions if any control device specified in paragraphs (b)(7)(i) through (b)(7)(vi) of this section is used. For these devices, the inlet emissions associated with the back-end process unit operation shall be determined in accordance with paragraph (b)(5) of this section, and the outlet emissions shall be calculated using the equation in paragraph (b)(8) of this section.

(i) A flare. The owner or operator shall demonstrate compliance as provided in § 63.504(c).

* * * * *

(iv) A control device for which a performance test was conducted for determining compliance with a regulation promulgated by the EPA and the test was conducted using the same Methods specified in this section and either no deliberate process changes have been made since the test, or the owner or operator can demonstrate that the results of the performance test, with or without adjustments, reliably demonstrate compliance despite process changes.

* * * * *

(vi) A hazardous waste incinerator for which the owner or operator has been issued a final permit under 40 CFR Part 270 and complies with the requirements of 40 CFR part 264, subpart O, or has certified compliance with the interim status requirements of 40 CFR part 265, subpart O.

(8) If one of the control devices listed in paragraph (b)(6) or (b)(7) of this section is used, the outlet emissions shall be calculated using Equation 30.

$$E_o = E_i (1 - R) \qquad \text{[Eq. 30]}$$

where:

E_o = Mass rate of total organic HAP at the outlet of the control or recovery device, dry basis, kg/hr.

E_i = Mass rate of total organic HAP at the inlet of the control or recovery device, dry basis, kg/hr, determined using the procedures in paragraph (b)(5)(iv) of this section.

R = Control efficiency of control device, as specified in paragraph (b)(8)(i), (ii), or (iii) of this section.

* * * * *

(c) * * *

(1) For each test run, the residual organic HAP content, adjusted for the control or recovery device emission reduction, shall be calculated using Equation 31.

$$HAPCONT_{run} = \frac{(C)(P) - \left(E_{i,run}\right) + \left(E_{o,run}\right)}{(P)} \qquad \text{[Eq. 31]}$$

Where:

$HAPCONT_{run}$ = Residual organic HAP content, kg organic HAP per kg elastomer (latex or dry crumb rubber).

C = Total uncontrolled organic HAP content, determined in accordance with paragraph (b)(3) of this section, kg organic HAP per kg latex or dry crumb rubber.

P = Weight of latex or dry crumb rubber processed during test run.

$E_{i,run}$ = Mass rate of total organic HAP at the inlet of the control or recovery device, dry basis, kg per test run.

$E_{o,run}$ = Mass rate of total organic HAP at the outlet of the control or recovery device, dry basis, kg per test run.

* * * * *

19. Section 63.497 is amended by:

a. Revising paragraph (a) introductory text;

b. Revising paragraph (a)(6);

c. Revising paragraph (c);

d. Revising paragraph (d) introductory text; and

e. Removing paragraph (d)(3).

The revisions read as follows:

§ 63.497 Back-end process provisions—monitoring provisions for control and recovery devices.

(a) An owner or operator complying with the residual organic HAP limitations in § 63.494(a) using control or recovery devices, or a combination of stripping and control or recovery devices, shall install the monitoring equipment specified in paragraphs (a)(1) through (a)(6) of this section, as appropriate.

* * * * *

(6) For a carbon adsorber, an integrating regeneration steam flow, nitrogen flow, or pressure monitoring device having an accuracy of at least ±10 percent of the flow rate, level, or pressure, capable of recording the total regeneration steam flow or nitrogen flow, or pressure (gauge or absolute) for each regeneration cycle; and a carbon bed temperature monitoring device, capable of recording the carbon bed temperature after each regeneration and within 15 minutes of completing any cooling cycle are required.

* * * * *

(c) The owner or operator shall establish a level, defined as either a maximum or minimum operating parameter, that indicates proper operation of the control or recovery device for each parameter monitored under paragraphs (a)(1) through (a)(6) of this section. This level is determined in accordance with § 63.505. The established level, along with supporting documentation, shall be submitted in the Notification of Compliance Status or the operating permit application, as required in § 63.506(e)(5) or (e)(8), respectively. The owner or operator shall operate control and recovery devices so that the daily average value is above or below the established level, as required, to ensure continued compliance with the standard, except as otherwise stated in this subpart.

(d) The owner or operator of an affected source with a controlled back-end process vent using a vent system that contains bypass lines that could divert a vent stream away from the control or recovery device used to comply with § 63.494(a) shall comply with paragraph (d)(1) or (d)(2) of this section. Equipment such as low leg drains, high point bleeds, analyzer vents, open-ended valves or lines, and pressure relief valves needed for safety purposes are not subject to this paragraph.

* * * * *

20. Section 63.498 is amended by:

a. Revising paragraph (a);

b. Revising paragraph (d) introductory text;

c. Revising paragraphs (d)(1) through (d)(4);

d. Revising paragraph (d)(5) introductory text;

e. Revising paragraph (d)(5)(i);

f. Revising paragraph (d)(5)(ii)(B);

g. Revising paragraph (d)(5)(iv) introductory text;

h. Revising paragraph (d)(5)(iv)(A); and

i. Removing and reserving paragraph (d)(5)(iv)(B).

The revisions read as follows:

§ 63.498 Back-end process provisions—recordkeeping.

(a) Each owner or operator shall maintain the records specified in paragraphs (b) through (d) of this section, as appropriate.

* * * * *

(d) Each owner or operator of a back-end process operation using control or recovery devices to comply with an organic HAP emission limitation in § 63.494(a) shall maintain the records specified in paragraphs (d)(1) through (d)(5) of this section. The recordkeeping requirements contained in paragraphs (d)(1) through (d)(4) pertain to the results of the testing required by § 63.496(b), for each of the three required test runs.

(1) The uncontrolled residual organic HAP content in the latex or dry crumb rubber, as required to be determined by § 63.496(b)(3), including the test results of the analysis;

(2) The total quantity of material (weight of latex or dry crumb rubber) processed during the test run, recorded in accordance with § 63.496(b)(4);

(3) The organic HAP emissions at the inlet and outlet of the control or recovery device, determined in accordance with § 63.496(b)(5) through (b)(8), including all test results and calculations.

(4) The residual organic HAP content, adjusted for the control or recovery device emission reduction, determined in accordance with § 63.496(c)(1).

(5) Each owner or operator using a control or recovery device shall keep the following records readily accessible:

(i) Continuous records of the equipment operating parameters specified to be monitored under § 63.497(a) or specified by the Administrator in accordance with § 63.497(b). For flares, the records specified in Table 3 of 40 CFR part 63, subpart G shall be maintained in place of continuous records.

(ii) * * *

(B) Monitoring data recorded during periods of monitoring system breakdowns, repairs, calibration checks, and zero (low-level) and high-level adjustments shall not be included in computing the hourly or daily averages. In addition, monitoring data recorded during periods of non-operation of the EPPU (or specific portion thereof) resulting in cessation of organic HAP emissions or during periods of start-up, shutdown, or malfunction shall not be included in computing the hourly or daily averages. Records shall be kept of the times and durations of all such periods and any other periods of process or control device operation when monitors are not operating.

* * * * *

(iv) Where a seal mechanism is used to comply with § 63.497(d)(2), hourly records of flow are not required.

(A) For compliance with § 63.497(d)(2), the owner or operator shall record whether the monthly visual inspection of the seals or closure mechanisms has been done, and shall record instances when the seal mechanism is broken, the bypass line damper or valve position has changed, or the key for a lock-and-key type configuration has been checked out, and records of any car-seal that has broken.

(B) [Reserved]

21. Section 63.499 is amended by:

a. Revising paragraph (a);

b. Revising paragraph (b)(2);

c. Revising paragraph (c) introductory text;

d. Revising paragraph (c)(3); and

e. Revising paragraph (d) introductory text.

The revisions read as follows:

§ 63.499 Back-end process provisions—reporting.

(a) The owner or operator of an affected source with back-end process operations shall submit the information required in paragraphs (a)(1) through (a)(3) of this section, for each back-end process operation at the affected source, as part of the Notification of Compliance Status specified in § 63.506(e)(5).

(1) The type of elastomer product processed in the back-end operation.

(2) The type of process (solution process, emulsion process, etc.)

(3) If the back-end process operation is subject to an emission limitation in § 63.494(a), whether compliance will be achieved by stripping technology, or by control or recovery devices.

(b) * * *

(2) For organic HAP content/stripper monitoring parameter re-determinations, and the addition of new grades, the information specified in § 63.498(c)(1) shall be submitted in the next periodic report specified in § 63.506(e)(6).

(c) Each owner or operator of an affected source with a back-end process operation control or recovery device that shall comply with an emission limitation in § 63.494(a) shall submit the information specified in paragraphs (c)(1) through (c)(3) of this section as part of the Notification of Compliance Status specified in § 63.506(e)(5).

* * * * *

(3) The information specified in paragraphs (c)(3)(i) when using a flare, and the information specified in paragraph (c)(3)(ii) of this section when using a boiler or process heater.

(i) The flare design (*i.e.*, steam-assisted, air-assisted, or non-assisted); all visible emission readings, heat content determinations, flow rate measurements, and exit velocity determinations made during the compliance determination; and all periods during the compliance determination when the pilot flame is absent.

(ii) A description of the location at which the vent stream is introduced into the boiler or process heater.

(d) Whenever a process change, as defined in § 63.496(d), is made that causes the redetermination of the compliance status for the back-end process operations, the owner or operator shall submit a report within 180 days after the process change as specified in § 63.506(e)(7)(iii). The report shall include:

* * * * *

22. Section 63.500 is amended by:

a. Revising paragraph (a)(3);

b. Revising paragraph (c)(1) introductory text;

c. Revising paragraph (c)(1)(iii) introductory text;

d. Revising paragraph (c)(2) introductory text; and

e. Revising paragraph (d)(2).

The revisions read as follows:

§ 63.500 Back-end process provisions—carbon disulfide limitations for styrene butadiene rubber by emulsion processes.

(a) * * *

(3) The owner or operator shall operate the process in accordance with a validated standard operating procedure at all times when styrene butadiene rubber is being produced using a sulfur containing shortstop agent. If a standard operating procedure is changed, it shall be re-validated.

* * * * *

(c) * * *

(1) The owner or operator may choose to conduct a performance test, using the procedures in paragraphs (c)(1)(i) through (c)(1)(iii) of this section to demonstrate compliance with the

carbon disulfide concentration limitation in paragraph (a) of this section. One test shall be conducted for each standard operating procedure.

* * * * *

(iii) To determine compliance with the carbon disulfide concentration limit in paragraph (a) of this section, the owner or operator shall use Method 18 or Method 25A of 40 CFR part 60, appendix A to measure carbon disulfide. Alternatively, any other method or data that has been validated according to the applicable procedures in Method 301, 40 CFR part 63, appendix A, may be used. The following procedures shall be used to calculate carbon disulfide concentration:

* * * * *

(2) The owner or operator may use engineering assessment to demonstrate compliance with the carbon disulfide concentration limitation in paragraph (a) of this section. Engineering assessment includes, but is not limited to, the following:

* * * * *

(d) * * *

(2) A description of the standard operating procedure used during the testing. This description shall include, at a minimum, an identification of the sulfur containing shortstop agent added to the styrene butadiene rubber prior to the dryers, an identification of the point and time in the process where the sulfur containing shortstop agent is added, and an identification of the amount of sulfur containing shortstop agent added per unit of latex.

* * * * *

23. Section 63.501 is amended by:

a. Revising paragraph (a);

b. Revising paragraph (b);

c. Revising paragraph (c)(1); and

d. Removing paragraph (d).

The revisions read as follows:

§ 63.501 Wastewater provisions.

(a) Except as specified in paragraph (c) of this section, the owner or operator of each affected source shall comply with the requirements of §§ 63.132 through 63.147 for each process wastewater stream originating at an affected source, with the requirements of § 63.148 for leak inspection provisions, and with the requirements of § 63.149 for equipment that is subject to § 63.149, with the differences noted in paragraphs (a)(1) through (a)(23) of this section. Further, the owner or operator of each affected source shall comply with the requirements of § 63.105(a) for maintenance wastewater, as specified in paragraph (b) of this section.

(1) When the determination of equivalence criteria in § 63.102(b) is referred to in §§ 63.132, 63.133, and 63.137, the provisions in § 63.6(g) shall apply for the purposes of this subpart.

(2) When the storage vessel requirements contained in §§ 63.119 through 63.123 are referred to in §§ 63.132 through 63.149, §§ 63.119 through 63.123 are applicable, with the exception of the differences referred to in § 63.484, for the purposes of this subpart.

(3) Owners and operators of affected sources are not required to comply with the requirements in § 63.132(b)(1) and § 63.132(d). Owners and operators of new affected sources, as defined in this subpart, shall comply with the requirements for existing sources in §§ 63.132 through 63.149, with the exceptions noted in paragraphs (a)(4), (a)(10), and (a)(23) of this section.

(4) When § 63.146(a) requires the submission of a request for approval to monitor alternative parameters according to the procedures specified in § 63.151(f) or (g), owners or operators requesting to monitor alternative parameters shall follow the procedures specified in § 63.506(f), for the purposes of this subpart.

(5) When § 63.147(d) requires owners or operators to keep records of the daily average value of each continuously monitored parameter for each operating day as specified in § 63.152(f), owners and operators shall instead keep records of the daily average value of each continuously monitored parameter as specified in § 63.506(d), for the purposes of this subpart.

(6) When §§ 63.132 through 63.149 refer to an ''existing source,'' the term ''existing affected source,'' as defined in § 63.480(a)(3) shall apply, for the purposes of this subpart.

(7) When §§ 63.132 through 63.149 refer to a ''new source,'' the term ''new affected source,'' as defined in § 63.480(a)(4) shall apply, for the purposes of this subpart.

(8) Whenever §§ 63.132 through 63.149 refer to a ''chemical manufacturing process unit,'' the term ''elastomer product process unit,'' (or EPPU) as defined in § 63.482, shall apply for the purposes of this subpart. In addition, when § 63.149 refers to ''a chemical manufacturing process unit that meets the criteria of § 63.100(b) of subpart F of this part,'' the term ''an EPPU as defined in § 63.482(b)'' shall apply for the purposes of this subpart.

(9) When § 63.132(a) and (b) refer to the ''applicable dates specified in § 63.100 of subpart F of this part,'' the compliance dates specified in § 63.481 shall apply, for the purposes of this subpart.

(10) The provisions of paragraphs (a)(10)(i), (a)(10)(ii), and (a)(10)(iii) of this section clarify the organic HAP that an owner or operator shall consider when complying with the requirements of §§ 63.132 through 63.149.

(i) Owners and operators are exempt from all requirements in §§ 63.132 through 63.149 that pertain solely and exclusively to organic HAP listed on table 8 of 40 CFR part 63, subpart G.

(ii) When §§ 63.132 through 63.149 refer to table 9 compounds, the owner or operator is only required to consider compounds that meet the definition of organic HAP in § 63.482 and that are listed in table 9 of 40 CFR part 63,subpart G, for the purposes of this subpart.

(iii) When §§ 63.132 through 63.149 refer to compounds in table 36 of 40 CFR part 63, subpart G, or compounds in List 1 and/or List 2, as listed in table 36 of 40 CFR part 63, subpart G, the owner or operator is only required to consider compounds that meet the definition of organic HAP in § 63.482 and that are listed in table 36 of 40 CFR part 63, subpart G, for the purposes of this subpart.

(11) Whenever §§ 63.132 through 63.147 refer to a Group 1 wastewater stream or a Group 2 wastewater stream, the definitions of these terms contained in § 63.482 shall apply, for the purposes of this subpart.

(12) When § 63.149(d) refers to ''§ 63.100(f) of subpart F'' the phrase ''§ 63.480(c)'' shall apply for the purposes of this subpart. In addition, where § 63.149(d) states ''and the item of equipment is not otherwise exempt from controls by the provisions of subparts A, F, G, or H of this part'', the phrase ''and the item of equipment is not otherwise exempt from controls by the provisions of subparts A, F, G, H, or U of this part,'' shall apply for the purposes of this subpart.

(13) When § 63.149(e)(1) and (e)(2) refer to ''a chemical manufacturing process unit subject to the new source requirements of 40 CFR 63.100(l)(1) or 40 CFR 63.100 (l)(2),'' the phrase ''an EPPU that is part of a new affected source or that is a new affected source,'' shall apply for the purposes of this subpart.

(14) When the Notification of Compliance Status requirements contained in § 63.152(b) are referred to in §§ 63.138 and 63.146, the Notification of Compliance Status requirements contained in § 63.506(e)(5) shall apply for the purposes of this subpart. In addition, when §§ 63.138 and 63.146 require that information be reported

according to § 63.152(b) in the Notification of Compliance Status, owners or operators of affected sources shall report the specified information in the Notification of Compliance Status required by § 63.506(e)(5), for the purposes of this subpart.

(15) When the Periodic Report requirements contained in § 63.152(c) are referred to in § 63.146, the Periodic Report requirements contained in § 63.506(e)(6) shall apply for the purposes of this subpart. In addition, when § 63.146 requires that information be reported in the Periodic Reports required in § 63.152(c), owners or operators of affected sources shall report the specified information in the Periodic Reports required in § 63.506(e)(6), for the purposes of this subpart.

(16) When the term ''range'' is used in §§ 63.132 through 63.149, the term ''level'' shall apply instead, for the purposes of this subpart. This level shall be determined using the procedures specified in § 63.505.

(17) When § 63.143(f) specifies that owners or operators shall establish the range that indicates proper operation of the treatment process or control device, the owner or operator shall instead comply with the requirements of § 63.505(c) or (d) for establishing parameter level maximums/minimums, for the purposes of this subpart.

(18) When § 63.146(b)(7) and § 63.146(b)(8) require that ''the information on parameter ranges specified in § 63.152(b)(2)'' be reported in the Notification of Compliance Status, owners and operators of affected sources are instead required to report the information on parameter levels in the Notification of Compliance Status as specified in § 63.506(e)(5)(ii), for the purposes of this subpart.

(19) For the purposes of this subpart, the owner or operator of an affected source is not required to include process wastewater streams that contain styrene when conducting performance tests for the purposes of calculating the required mass removal (RMR) or the actual mass removal (AMR) under the provisions described in § 63.145(f) or § 63.145(g). For purposes of this paragraph, a process wastewater stream is considered to contain styrene if the wastewater stream meets the requirements in paragraph (a)(19)(i), (ii), or (iii) of this section:

(i) The wastewater stream originates at equipment that produces styrene butadiene rubber by solution;

(ii) The wastewater stream originates at equipment that produces styrene butadiene rubber by emulsion; or

(iii) The wastewater stream originates at equipment that produces styrene butadiene latex.

(20) When the provisions of § 63.139(c)(1)(ii), § 63.145(d)(4), or § 63.145(i)(2) specify that Method 18, 40 CFR part 60, appendix A shall be used, Method 18 or Method 25A, 40 CFR part 60, appendix A may be used for the purposes of this subpart. The use of Method 25A, 40 CFR part 60, appendix A shall conform with the requirements in paragraphs (a)(20)(i) and (a)(20)(ii) of this section.

(i) The organic HAP used as the calibration gas for Method 25A, 40 CFR part 60, appendix A shall be the single organic HAP representing the largest percent by volume of the emissions.

(ii) The use of Method 25A, 40 CFR part 60, appendix A is acceptable if the response from the high-level calibration gas is at least 20 times the standard deviation of the response from the zero calibration gas when the instrument is zeroed on the most sensitive scale.

(21) In § 63.145(j), instead of the reference to § 63.11(b), and instead of § 63.145(j)(1) and § 63.145(j)(2), the requirements in § 63.504(c) shall apply.

(22) The owner or operator of a facility which receives a Group 1 wastewater stream, or a residual removed from a Group 1 wastewater stream, for treatment pursuant to § 63.132(g) is subject to the requirements of § 63.132(g) with the differences identified in this section, and is not subject to subpart DD of this part, with respect to the received material.

(23) When § 63.132(g) refers to ''§§ 63.133 through 63.137'' or ''§§ 63.133 through 63.147'', the provisions in this § 63.501 shall apply, for the purposes of this subpart.

(b) Except for those streams exempted by paragraph (c) of this section, the owner or operator of each affected source shall comply with the requirements for maintenance wastewater in § 63.105, except that when § 63.105(a) refers to ''organic HAPs listed in table 9 of subpart G of this part,'' the owner or operator is only required to consider compounds that meet the definition of organic HAP in § 63.482 and that are listed in table 9 of 40 CFR part 63, subpart G, for the purposes of this subpart.

(c) * * *

(1) Back-end wastewater streams originating from equipment whose only elastomer products are latex products.

24. Section 63.502 is amended by:

a. Revising the section title;

b. Revising paragraph (a);

c. Revising paragraph (b) introductory text;

d. Revising paragraphs (b)(1) through (b)(3);

e. Revising paragraphs (b)(5) through (b)(7);

f. Revising paragraph (c);

g. Revising paragraph (d);

h. Revising paragraph (e);

i. Revising paragraph (f);

j. Revising paragraph (g);

k. Revising paragraph (h);

l. Revising paragraph (i);

m. Revising paragraph (j);

n. Adding paragraph (k);

o. Adding paragraph (l);

p. Adding paragraph (m); and

q. Adding paragraph (n).

The revisions and additions read as follows:

§ 63.502 Equipment leak and heat exchange system provisions.

(a) *Equipment leak provisions.* The owner or operator of each affected source, shall comply with the requirements of subpart H of this part, with the exceptions noted in paragraphs (b) through (m) of this section.

(b) Surge control vessels and bottoms receivers described in paragraphs (b)(1) through (b)(7) of this section are exempt from the requirements contained in § 63.170.

(1) Surge control vessels and bottoms receivers that receive only styrene-butadiene latex;

(2) Surge control vessels and bottoms receivers that receive latex products other than styrene-butadiene latex, located downstream of the stripping operations;

(3) Surge control vessels and bottoms receivers that receive only high conversion latex products;

* * * * *

(5) Surge control vessels and bottoms receivers that receive only styrene;

(6) Surge control vessels and bottoms receivers that receive only acrylamide; and

(7) Surge control vessels and bottoms receivers that receive only epichlorohydrin.

(c) The compliance date for the equipment leak provisions in this section is provided in § 63.481(d). Whenever subpart H of this part refers to the compliance dates specified in any paragraph contained in § 63.100, the compliance dates listed in § 63.481(d) shall instead apply, for the purposes of this subpart. When § 63.182(c)(4) refers to ''sources subject to subpart F,'' the phrase ''sources subject to this subpart'' shall apply, for the purposes of this subpart. In addition, extensions of compliance dates are addressed by § 63.481(e) instead of by § 63.182(a)(6), for the purposes of this subpart.

(d) For an affected source producing polybutadiene rubber or styrene

butadiene rubber by solution, the conditions in paragraphs (d)(1), (d)(2), and (d)(3) of this section are applicable.

(1) Indications of liquids dripping, as defined in subpart H of this part, from bleed ports in pumps and agitator seals in light liquid service, shall not be considered a leak. For the purposes of this subpart, a ''bleed port'' is a technologically-required feature of the pump or seal whereby polymer fluid used to provide lubrication and/or cooling of the pump or agitator shaft exits the pump, thereby resulting in a visible dripping of fluid.

(2) For reciprocating pumps in heavy liquid service, owners and operators are not required to comply with the requirements in § 63.169 and associated recordkeeping and reporting requirements.

(3) Reciprocating pumps in light liquid service are exempt from § 63.163 and associated recordkeeping and reporting requirements, if recasting the distance piece or reciprocating pump replacement would be necessary to comply with that section.

(e) Owners and operators of an affected source subject to this subpart are not required to submit the Initial Notification required by § 63.182(a)(1) and § 63.182(b).

(f) As specified in § 63.506(e)(5), the Notification of Compliance Status required by § 63.182(a)(2) and § 63.182(c) shall be submitted within 150 days (rather than 90 days) of the applicable compliance date specified in § 63.481(d) for the equipment leak provisions.

(g) The information specified by § 63.182(a)(3) and § 63.182(d) (i.e., Periodic Reports) shall be submitted as part of the Periodic Reports required by § 63.506(e)(6).

(h) If specific items of equipment, comprising part of a process unit subject to this subpart, are managed by different administrative organizations (e.g., different companies, affiliates, departments, divisions, etc.), those items of equipment may be aggregated with any EPPU within the affected source for all purposes under subpart H of this part, providing there is no delay in achieving the applicable compliance date.

(i) When § 63.166(b)(4)(i) refers to Table 9 of subpart G of this part, the owner or operator is only required to consider organic HAP listed on Table 9 of subpart G of this subpart that are also listed on Table 5 of this subpart.

(j) When the provisions of subpart H of this part specify that Method 18, 40 CFR part 60, appendix A shall be used, either Method 18 or Method 25A, 40 CFR part 60, appendix A may be used for the purposes of this subpart. The use of Method 25A, 40 CFR part 60, appendix A shall conform with the requirements in paragraphs (j)(1) and (j)(2) of this section.

(1) The organic HAP used as the calibration gas for Method 25A, 40 CFR part 60, appendix A shall be the single organic HAP representing the largest percent by volume of emissions.

(2) The use of Method 25A, 40 CFR part 63, appendix A is acceptable if the response from the high-level calibration gas is at least 20 times the standard deviation of the response from the zero calibration gas when the instrument is zeroed on the most sensitive scale.

(k) An owner or operator using a flare to comply with the requirements of this section shall conduct a compliance demonstration as specified in § 63.504(c).

(l) When the term ''equipment'' is used in subpart H of this part, the definition of this term in § 63.482(b) shall apply for the purposes of this subpart.

(m) The phrase ''the provisions of subparts F, I, or U of this part'' shall apply instead of the phrase ''the provisions of subpart F or I of this part'' throughout §§ 63.163 and 63.168, for the purposes of this subpart. In addition, the phrase ''subparts F, I, and U'' shall apply instead of the phrase ''subparts F and I'' in § 63.174(c)(2)(iii), for the purposes of this subpart.

(n) *Heat exchange system provisions.* The owner or operator of each affected source shall comply with the requirements of § 63.104 for heat exchange systems, with the exceptions noted in paragraphs (n)(1) through (n)(5) of this section.

(1) When the term ''chemical manufacturing process unit'' is used in § 63.104, the term ''elastomer product process unit'' (or EPPU) shall apply for the purposes of this subpart, with the exception noted in paragraph (n)(2) of this section.

(2) When the phrase ''a chemical manufacturing process unit meeting the conditions of § 63.100(b)(1) through (b)(3) of this subpart, except for chemical manufacturing process units meeting the condition specified in § 63.100(c) of this subpart'' is used in § 63.104(a), the term ''an EPPU, except for EPPUs meeting the condition specified in § 63.480(b)'' shall apply for the purposes of this subpart.

(3) When § 63.104 refers to Table 4 of subpart F of this part or Table 9 of subpart G of this part, the owner or operator is only required to consider organic HAP listed on Table 5 of this subpart.

(4) When § 63.104(c)(3) specifies the monitoring plan retention requirements, and when § 63.104(f)(1) refers to the record retention requirements in § 63.103(c)(1), the requirements in § 63.506(a) and § 63.506(h) shall apply, for the purposes of this subpart.

(5) When § 63.104(f)(2) requires information to be reported in the Periodic Reports required by § 63.152(c), the owner or operator shall instead report the information specified in § 63.104(f)(2) in the Periodic Reports required by § 63.506(e)(6), for the purposes of this subpart.

(6) The compliance date for heat exchange systems subject to the provisions of this section is specified in § 63.481(d)(6).

25. Section 63.503 is amended by:

a. Revising paragraph (e)(3)(ii);

b. Revising paragraph (g)(2)(iii)(B)(*2*);

c. Revising paragraph (h)(1) introductory text;

d. Revising paragraph (h)(7)(ii) introductory text;

e. Revising paragraph (i)(1) introductory text; and

f. Revising paragraph (m)(3)(iii).

The revisions read as follows:

§ 63.503 Emissions averaging provisions.

* * * * *

(e) * * *

(3) * * *

(ii) The initial demonstration in the Emissions Averaging Plan or operating permit application that credit-generating emission points will be capable of generating sufficient credits to offset the debits from the debit-generating emission points shall be made under representative operating conditions. After the compliance date, actual operating data shall be used for all debit and credit calculations.

* * * * *

(g) * * *

(2) * * *

(iii) * * *

(B) * * *

(*2*) For determining debits from Group 1 continuous front-end process vents, product recovery devices shall not be considered control devices and shall not be assigned a percent reduction in calculating $ECFEPV_{iACTUAL}$. The sampling site for measurement of uncontrolled emissions shall be after the final uncontrolled recovery device. However, as provided in § 63.113(a)(3), a Group 1 continuous front-end process vent may add sufficient product recovery to raise the TRE index value above 1.0, thereby becoming a Group 2 continuous front-end process vent. Such a continuous front-end process vent is not a Group 1 continuous front-end

process vent and should, therefore, not be included in determining debits under this paragraph.

* * * * *

(h) * * *

(1) Source-wide credits shall be calculated using Equation 41. Credits and all terms of the equation are in units of Mg/month, and the baseline date is November 15, 1990:

$$\begin{aligned}\text{Credits} = {} & D\sum_{i=1}^{n}\left((0.02)\,ECFEPV1_{iu} - ECFEPV1_{iACTUAL}\right) + D\sum_{i=1}^{m}\left(ECFEPV2_{iBASE} - ECFEPV2_{iACTUAL}\right) \\ & + D\sum_{i=1}^{n}\left((0.05)\,ES1_{iu} - ES1_{iACTUAL}\right) + D\sum_{i=1}^{m}\left(ES2_{iBASE} - ES2_{iACTUAL}\right) + D\left(EBEP_{c}\right) - \left(EBEP_{ACTUAL}\right) \\ & + D\sum_{i=1}^{n}\left(EWW1_{ic} - EWW1_{iACTUAL}\right) + D\sum_{i=1}^{m}\left(EWW2_{iBASE} - EWW2_{iACTUAL}\right) \\ & + D\sum_{i=1}^{n}\left((0.1)\,EBFEPV1_{iu} - EBFEPV1_{iACTUAL}\right) + D\sum_{i=1}^{n}\left((0.1)\,EABV1_{iu} - EABV1_{iACTUAL}\right) \\ & + D\sum_{i=1}^{m}\left(EBFEPV2_{iBASE} - EBFEPV2_{iACTUAL}\right) + D\sum_{i=1}^{m}\left(EABV2_{iBASE} - EABV2_{iACTUAL}\right) \qquad \text{[Eq. 41]}\end{aligned}$$

Where:

D = Discount factor = 0.9 for all credit generating emission points, except those controlled by a pollution prevention measure; discount factor = 1.0 for each credit generating emission point controlled by a pollution prevention measure (*i.e.*, no discount provided).

$ECFEPV1_{iACTUAL}$ = Emissions for each Group 1 continuous front-end process vent i that is controlled to a level more stringent than the reference control technology. $ECFEPV1_{iACTUAL}$ is calculated according to paragraph (h)(2)(ii) of this section.

$(0.02)ECFEPV1_{iu}$ = Emissions from each Group 1 continuous front-end process vent i if the reference control technology had been applied to the uncontrolled emissions. $ECFEPV1_{iu}$ is calculated according to paragraph (h)(2)(i) of this section.

$ECFEPV2_{iACTUAL}$ = Emissions from each Group 2 continuous front-end process vent i that is controlled. $ECFEPV2_{iACTUAL}$ is calculated according to paragraph (h)(2)(iii) of this section.

$ECFEPV2_{iBASE}$ = Emissions from each Group 2 continuous front-end process vent i at the baseline date. $ECFEPV2_{iBASE}$ is calculated in paragraph (h)(2)(iv) of this section.

$ES1_{iACTUAL}$ = Emissions from each Group 1 storage vessel i that is controlled to a level more stringent than the reference control technology or standard. $ES1_{iACTUAL}$ is calculated according to paragraph (h)(3) of this section.

$(0.05)\ ES1_{iu}$ = Emissions from each Group 1 storage vessel i if the reference control technology had been applied to the uncontrolled emissions. $ES1_{iu}$ is calculated according to paragraph (h)(3) of this section.

$ES2_{iACTUAL}$ = Emissions from each Group 2 storage vessel i that is controlled. $ES2_{iACTUAL}$ is calculated according to paragraph (h)(3) of this section.

$ES2_{iBASE}$ = Emissions from each Group 2 storage vessel i at the baseline date. $ES2_{iBASE}$ is calculated in paragraph (h)(3) of this section.

$EBEP_{ACTUAL}$ = Actual emissions from back-end process operations, Mg/month. $EBEP_{ACTUAL}$ is calculated in paragraph (h)(4)(i) of this section.

$EBEP_{c}$ = Emissions from back-end process operations if the residual organic HAP limits in § 63.494(a) were met, Mg/month. $EBEP_{c}$ is calculated in paragraph (h)(4)(ii) of this section.

$EWW1_{iACTUAL}$ = Emissions from each Group 1 wastewater stream i that is controlled to a level more stringent than the reference control technology. $EWW1_{iACTUAL}$ is calculated according to paragraph (h)(5) of this section.

$EWW1_{ic}$ = Emissions from each Group 1 wastewater stream i if the reference control technology had been applied to the uncontrolled emissions. $EWW1_{ic}$ is calculated according to paragraph (h)(5) of this section.

$EWW2_{iACTUAL}$ = Emissions from each Group 2 wastewater stream i that is controlled. $EWW2_{iACTUAL}$ is calculated according to paragraph (h)(5) of this section.

$EWW2_{iBASE}$ = Emissions from each Group 2 wastewater stream i at the baseline date. $EWW2_{iBASE}$ is calculated according to paragraph (h)(5) of this section.

$(0.1)\ EBFEPV1_{iu}$ = Emissions from each Group 1 batch front-end process vent i if the applicable standard had been applied to the uncontrolled emissions. $EBFEPV1_{iu}$ is calculated according to paragraph (h)(6)(i) of this section.

$EBFEPV1_{iACTUAL}$ = Emissions from each Group 1 batch front-end process vent i that is controlled to a level more stringent than the applicable standard. $EBFEPV1_{iACTUAL}$ is calculated according to paragraph (h)(6)(ii) of this section.

$(0.1)EABV1_{iu}$ = Emissions from each Group 1 aggregate batch vent stream i if the applicable standard had been applied to the uncontrolled emissions. $EABV1_{iu}$ is calculated according to paragraph (h)(7)(i) of this section.

$EABV1_{iACTUAL}$ = Emissions from each Group 1 aggregate batch vent stream i that is controlled to a level more stringent than the applicable standard. $EABV1_{iACTUAL}$ is calculated according to paragraph (h)(7)(ii) of this section.

$EBFEPV2_{iBASE}$ = Emissions from each Group 2 batch front-end process vent i at the baseline date. $EBFEPV2_{iBASE}$ is calculated according to paragraph (h)(6)(iv) of this section.

$EBFEPV2_{iACTUAL}$ = Emissions from each Group 2 batch front-end process vent i that is controlled. $EBFEPV2_{iACTUAL}$ is calculated according to paragraph (h)(6)(iii) of this section.

$EABV2_{iBASE}$ = Emissions from each Group 2 aggregate batch vent stream

i at the baseline date. $EABV2_{iBASE}$ is calculated according to paragraph (h)(7)(iv) of this section.

$EABV2_{iACTUAL}$ = Emissions from each Group 2 aggregate batch vent stream i that is controlled. $EABV2_{iACTUAL}$ is calculated according to paragraph (h)(7)(iii) of this section.

n = Number of Group 1 emission points included in the emissions average. The value of n is not necessarily the same for continuous front-end process vents, batch front-end process vents, aggregate batch vent streams, storage vessels, wastewater streams, or the collection of process sections within the affected source.

m = Number of Group 2 emission points included in the emissions average. The value of m is not necessarily the same for continuous front-end process vents, batch front-end process vents, aggregate batch vent streams, storage vessels, wastewater streams, or the collection of process sections within the affected source.

* * * * *

(7) * * *

(ii) Actual emissions from Group 1 aggregate batch vent streams controlled to a level more stringent than the standard ($EABV1_{iACTUAL}$) shall be calculated using Equation 49.

$$EABV1_{iACTUAL} = EABV1_{iu}\left(1 - \frac{\text{Percent reduction}}{100\%}\right) \quad \text{[Eq. 49]}$$

* * * * *

(i) * * *

(1) In those cases where the owner or operator is seeking permission to take credit for use of a control technology that is different in use or design from the reference control technology, and the different control technology will be used in more than three applications at a single plant-site, the owner or operator shall submit the information specified in paragraphs (i)(1)(i) through (i)(1)(iv) of this section, as specified in § 63.506(e)(7)(ii), to the Director of the EPA Office of Air Quality Planning and Standards, in writing.

* * * * *

(m) * * *

(3) * * *

(iii) For closed vent systems with control devices, conduct an initial design evaluation and submit an operating plan according to the procedures specified in § 63.120(d) and § 63.122(b), and as required by § 63.484.

* * * * *

26. Section 63.504 is revised (including the section title) to read as follows:

§ 63.504 Additional requirements for performance testing.

(a) Performance testing shall be conducted in accordance with § 63.7(a)(1), (a)(3), (d), (e)(1), (e)(2), (e)(4), (g), and (h), with the exceptions specified in paragraphs (a)(1) through (a)(5) of this section and the additions specified in paragraph (b) of this section. Sections 63.484 through 63.501 also contain specific testing requirements.

(1) Performance tests shall be conducted according to the provisions of § 63.7(e)(1) and (e)(2), except that performance tests shall be conducted at maximum representative operating conditions achievable during one of the time periods described in paragraph (a)(1)(i) of this section, without causing any of the situations described in paragraph (a)(1)(ii) of this section to occur.

(i) The 6-month period that ends 2 months before the Notification of Compliance Status is due, according to § 63.506(e)(5); or the 6-month period that begins 3 months before the performance test and ends 3 months after the performance test.

(ii) Causing damage to equipment; necessitating that the owner or operator make product that does not meet an existing specification for sale to a customer; or necessitating that the owner or operator make product in excess of demand.

(2) References in § 63.7(g) to the Notification of Compliance Status requirements in § 63.9(h) shall refer to the requirements in § 63.506(e)(5).

(3) Because the site-specific test plans in § 63.7(c)(3) are not required, § 63.7(h)(4)(ii) is not applicable.

(4) The owner or operator shall notify the Administrator of the intent to conduct a performance test at least 30 days before the performance test is scheduled, to allow the Administrator the opportunity to have an observer present during the test. If after 30 days notice for an initially scheduled performance test, there is a delay (due to operational problems, etc.) in conducting the scheduled performance test, the owner or operator of an affected facility shall notify the Administrator as soon as possible of any delay in the original test date, either by providing at least 7 days prior notice of the rescheduled date of the performance test, or by arranging a rescheduled date with the Administrator by mutual agreement.

(5) Performance tests shall be performed no later than 150 days after the compliance dates specified in this subpart (*i.e.*, in time for the results to be included in the Notification of Compliance Status), rather than according to the time periods in § 63.7(a)(2).

(b) Data shall be reduced in accordance with the EPA approved methods specified in the applicable subpart or, if other test methods are used, the data and methods shall be validated according to the protocol in Method 301, 40 CFR part 63, appendix A.

(c) Notwithstanding any other provision of this subpart, if an owner or operator of an affected source uses a flare to comply with any of the requirements of this subpart, the owner or operator shall comply with paragraphs (c)(1) through (c)(3) of this section. The owner or operator is not required to conduct a performance test to determine percent emission reduction or outlet organic HAP or TOC concentration. If a compliance demonstration has been conducted previously for a flare, using the techniques specified in paragraphs (c)(1) through (c)(3) of this section, that compliance demonstration may be used to satisfy the requirements of this paragraph if either no deliberate process changes have been made since the compliance demonstration, or the results of the compliance demonstration reliably demonstrate compliance despite process changes.

(1) Conduct a visible emission test using the techniques specified in § 63.11(b)(4);

(2) Determine the net heating value of the gas being combusted, using the techniques specified in § 63.11(b)(6); and

(3) Determine the exit velocity using the techniques specified in either § 63.11(b)(7)(i) (and § 63.11(b)(7)(iii), where applicable) or § 63.11(b)(8), as appropriate.

27. Section 63.505 is amended by:

a. Revising paragraph (a);

b. Revising paragraph (b) introductory text;

c. Revising paragraph (b)(2);

d. Revising paragraph (b)(3) introductory text;

e. Revising paragraphs (b)(3)(i)(A) through (b)(3)(i)(D);
f. Revising paragraph (b)(3)(ii);
g. Revising paragraph (c);
h. Revising paragraph (d);
i. Revising paragraph (e) introductory text;
j. Revising paragraph (e)(3);
k. Revising paragraph (g)(1) introductory text;
l. Revising paragraphs (g)(1)(ii) and (g)(1)(iii);
m. Revising paragraph (g)(2) introductory text;
n. Revising paragraph (g)(2)(ii);
o. Revising paragraph (h)(1) introductory text;
p. Revising paragraph (h)(2) introductory text;
q. Removing and reserving paragraph (b)(1);
r. Removing and reserving paragraph (f);
s. Removing paragraph (b)(3)(i)(E);
t. Adding paragraph (g)(1)(v); and
u. Adding paragraph (g)(3).

The revisions and additions read as follows:

§ 63.505 Parameter monitoring levels and excursions.

(a) *Establishment of parameter monitoring levels.* The owner or operator of a control or recovery device that has one or more parameter monitoring level requirements specified under this subpart shall establish a maximum or minimum level for each measured parameter. If a performance test is required by this subpart for a control device, the owner or operator shall use the procedures in either paragraph (b) or (c) of this section to establish the parameter monitoring level(s). If a performance test is not required by this subpart for a control device, the owner or operator may use the procedures in paragraph (b), (c), or (d) of this section to establish the parameter monitoring levels. When using the procedures specified in paragraph (c) or (d) of this section, the owner or operator shall submit the information specified in § 63.506(e)(3)(vii) for review and approval, as part of the Precompliance Report.

(1) The owner or operator shall operate control and recovery devices such that the daily average of monitored parameters remains above the minimum established level or below the maximum established level, except as otherwise stated in this subpart.

(2) As specified in § 63.506(e)(5), all established levels, along with their supporting documentation and the definition of an operating day, shall be submitted as part of the Notification of Compliance Status.

(3) Nothing in this section shall be construed to allow a monitoring parameter excursion caused by an activity that violates other applicable provisions of subpart A, F, G, or H of this part.

(b) *Establishment of parameter monitoring levels based exclusively on performance tests.* In cases where a performance test is required by this subpart, or the owner or operator of the affected source elects to do a performance test in accordance with the provisions of this subpart, and an owner or operator elects to establish a parameter monitoring level for a control, recovery, or recapture device based exclusively on parameter values measured during the performance test, the owner or operator of the affected source shall comply with the procedures in paragraphs (b)(1) through (b)(4) of this section, as applicable.

(1) [Reserved]

(2) *Back-end process operations using a control or recovery device to comply with §§ 63.493 through 63.500 and continuous front-end process vents.* During initial compliance testing, the appropriate parameter shall be continuously monitored during the required 1-hour runs. The monitoring level(s) shall then be established as the average of the maximum (or minimum) point values from the three test runs. The average of the maximum values shall be used when establishing a maximum level, and the average of the minimum values shall be used when establishing a minimum level.

(3) *Batch front-end process vents.* The monitoring level(s) shall be established using the procedures specified in either paragraph (b)(3)(i) or (b)(3)(ii) of this section. The procedures specified in this paragraph (b)(3) may only be used if the batch emission episodes, or portions thereof, selected to be controlled were tested, and monitoring data were collected, during the entire period in which emissions were vented to the control device, as specified in § 63.490(c)(1)(i). If the owner or operator chose to test only a portion of the batch emission episode, or portion thereof, selected to be controlled, the procedures in paragraph (c) of this section shall be used.

(i) * * *

(A) The average monitored parameter value shall be calculated for each batch emission episode, or portion thereof, in the batch cycle selected to be controlled. The average shall be based on all values measured during the required performance test.

(B) If the level to be established is a maximum operating parameter, the level shall be defined as the minimum of the average parameter values of the batch emission episodes, or portions thereof, in the batch cycle selected to be controlled (*i.e.*, identify the emission episode, or portion thereof, which requires the lowest parameter value in order to assure compliance. The average parameter value that is necessary to assure compliance for that emission episode, or portion thereof, shall be the level for all emission episodes, or portions thereof, in the batch cycle, that are selected to be controlled).

(C) If the level to be established is a minimum operating parameter, the level shall be defined as the maximum of the average parameter values of the batch emission episodes, or portions thereof, in the batch cycle selected to be controlled (*i.e.*, identify the emission episode, or portion thereof, which requires the highest parameter value in order to assure compliance. The average parameter value that is necessary to assure compliance for that emission episode, or portion thereof, shall be the level for all emission episodes, or portions thereof, in the batch cycle, that are selected to be controlled).

(D) Alternatively, an average monitored parameter value shall be calculated for the entire batch cycle based on all values measured during each batch emission episode, or portion thereof, selected to be controlled.

(ii) Instead of establishing a single level for the batch cycle, as described in paragraph (b)(3)(i) of this section, an owner or operator may establish separate levels for each batch emission episode, or portion thereof, selected to be controlled. Each level shall be determined as specified in paragraph (b)(3)(i)(A) of this section.

* * * * *

(c) *Establishment of parameter monitoring levels based on performance tests, supplemented by engineering assessments and/or manufacturer's recommendations.* In cases where a performance test is required by this subpart, or the owner or operator elects to do a performance test in accordance with the provisions of this subpart, and the owner or operator elects to establish a parameter monitoring level for a control, recovery, or recapture device under this paragraph (c), the owner or operator shall supplement the parameter values measured during the performance test with engineering assessments and/or manufacturer's recommendations. Performance testing is not required to be conducted over the entire range of expected parameter values.

(d) *Establishment of parameter monitoring based on engineering*

assessments and/or manufacturer's recommendations. In cases where a performance test is not required by this subpart and an owner or operator elects to establish a parameter monitoring level for a control, recovery, or recapture device under this paragraph (d), the determination of the parameter monitoring level shall be based exclusively on engineering assessments and/or manufacturer's recommendations.

(e) *Demonstration of compliance with back-end process provisions using stripper parameter monitoring.* If the owner or operator is demonstrating compliance with § 63.495 using stripper parameter monitoring, stripper parameter levels shall be established for each grade in accordance with paragraphs (e)(1) and (e)(2) of this section. A single set of stripper parameter levels may be representative of multiple grades.

* * * * *

(3) After the initial determinations, an owner or operator may add a grade, with corresponding stripper parameter levels, using the procedures in paragraphs (e)(1) and (e)(2) of this section. The results of this determination shall be submitted in the next periodic report.

* * * * *

(f) [Reserved]

(g) * * *

(1) With respect to storage vessels (where the applicable monitoring plan specifies continuous monitoring), continuous front-end process vents, aggregate batch vent streams, back-end process operations complying through the use of control or recovery devices, and process wastewater streams, an excursion means any of the three cases listed in paragraphs (g)(1)(i) through (g)(1)(iii) of this section. For a control or recovery device where multiple parameters are monitored, if one or more of the parameters meets the excursion criteria in paragraphs (g)(1)(i) through (g)(1)(iii) of this section, this is considered a single excursion for the control or recovery device. For each excursion, the owner or operator shall be deemed out of compliance with the provisions of this subpart, except as provided in paragraph (i) of this section.

* * * * *

(ii) When the period of control or recovery device operation, with the exception noted in paragraph (g)(1)(v) of this section, is 4 hours or greater in an operating day and monitoring data are insufficient, as defined in paragraph (g)(1)(iv) of this section, to constitute a valid hour of data for at least 75 percent of the operating hours.

(iii) When the period of control or recovery device operation, with the exception noted in paragraph (g)(1)(v) of this section, is less than 4 hours in an operating day and more than two of the hours during the period of operation do not constitute a valid hour of data due to insufficient monitoring data, as defined in paragraph (g)(1)(iv) of this section.

* * * * *

(v) The periods listed in paragraphs (g)(1)(v)(A) through (g)(1)(v)(E) of this section are not considered to be part of the period of control or recovery device operation, for the purposes of paragraphs (g)(1)(ii) and (g)(1)(iii) of this section.

(A) Monitoring system breakdowns, repairs, calibration checks, and zero (low-level) and high-level adjustments;

(B) Start-ups;

(C) Shutdowns;

(D) Malfunctions; or

(E) Periods of non-operation of the affected source (or portion thereof), resulting in cessation of the emissions to which the monitoring applies.

(2) With respect to batch front-end process vents, an excursion means one of the two cases listed in paragraphs (g)(2)(i) and (g)(2)(ii) of this section. For a control device where multiple parameters are monitored, if one or more of the parameters meets the excursion criteria in either paragraph (g)(2)(i) or (g)(2)(ii) of this section, this is considered a single excursion for the control device. For each excursion, the owner or operator shall be deemed out of compliance with the provisions of this subpart, except as provided in paragraph (i) of this section.

* * * * *

(ii) When monitoring data are insufficient for an operating day. Monitoring data shall be considered insufficient when measured values are not available for at least 75 percent of the 15-minute periods when batch emission episodes selected to be controlled are being vented to the control device during the operating day, using the procedures specified in paragraphs (g)(2)(ii)(A) through (g)(2)(ii)(D) of this section.

(A) Determine the total amount of time during the operating day when batch emission episodes selected to be controlled are being vented to the control device.

(B) Subtract the time during the periods listed in paragraphs (g)(2)(ii)(B)(*1*) through (g)(2)(ii)(B)(*4*) of this section from the total amount of time determined in paragraph (g)(2)(ii)(A) of this section, to obtain the operating time used to determine if monitoring data are insufficient.

(*1*) Monitoring system breakdowns, repairs, calibration checks, and zero (low-level) and high-level adjustments;

(*2*) Start-ups;

(*3*) Shutdowns; or

(*4*) Malfunctions.

(C) Determine the total number of 15-minute periods in the operating time used to determine if monitoring data are insufficient, as was determined in accordance with paragraph (g)(2)(ii)(B) of this section.

(D) If measured values are not available for at least 75 percent of the total number of 15-minute periods determined in paragraph (g)(2)(ii)(C) of this section, the monitoring data are insufficient for the operating day.

(3) For storage vessels where the applicable monitoring plan does not specify continuous monitoring, an excursion is defined in paragraph (g)(3)(i) or (ii) of this section, as applicable. For a control or recovery device where multiple parameters are monitored, if one or more of the parameters meets the excursion criteria, this is considered a single excursion for the control or recovery device. For each excursion, the owner or operator shall be deemed out of compliance with the provisions of this subpart, except as provided in paragraph (i) of this section.

(i) If the monitoring plan specifies monitoring a parameter and recording its value at specific intervals (such as every 15 minutes or every hour), either of the cases listed in paragraph (g)(3)(i)(A) or (g)(3)(i)(B) of this section is considered a single excursion for the control device.

(A) When the average value of one or more parameters, averaged over the duration of the filling period for the storage vessel, is above the maximum level or below the minimum level established for the given parameters.

(B) When monitoring data are insufficient. Monitoring data shall be considered insufficient when measured values are not available for at least 75 percent of the specific intervals at which parameters are to be monitored and recorded, according to the storage vessel's monitoring plan, during the filling period for the storage vessel.

(ii) If the monitoring plan does not specify monitoring a parameter and recording its value at specific intervals (for example, if the relevant operating requirement is to exchange a disposable carbon canister before expiration of its rated service life), the monitoring plan shall define an excursion in terms of the relevant operating requirement.

(h) * * *

(1) With respect to back-end process operations complying through the use of stripping technology, and demonstrating

compliance by sampling, an excursion means one of the two cases listed in paragraphs (h)(1)(i) and (h)(1)(ii) of this section. For each excursion, the owner or operator shall be deemed out of compliance with the provisions of this subpart, except as provided in paragraph (i) of this section.

* * * * *

(2) With respect to back-end process operations complying through the use of stripping technology, and demonstrating compliance by stripper parameter monitoring, an excursion means one of the three cases listed in paragraphs (h)(2)(i), (h)(2)(ii), and (h)(2)(iii) of this section. For each excursion, the owner or operator shall be deemed out of compliance with the provisions of this subpart, except as provided in paragraph (i) of this section.

* * * * *

28. Section 63.506 is amended by:

a. Revising paragraph (a);

b. Revising paragraphs (b)(1) and (b)(2);

c. Revising paragraph (d) introductory text;

d. Revising paragraphs (d)(2) and (d)(3);

e. Revising paragraphs (d)(6) through (d)(9);

f. Revising paragraph (e) introductory text;

g. Revising paragraphs (e)(1) through (e)(3);

h. Revising paragraph (e)(4) introductory text;

i. Revising paragraph (e)(4)(i);

j. Revising paragraph (e)(4)(ii) introductory text;

k. Revising paragraph (e)(4)(ii)(B);

l. Revising paragraph (e)(4)(ii)(D);

m. Revising paragraphs (e)(4)(ii)(F)(*1*) and (e)(4)(ii)(F)(*2*);

n. Revising paragraphs (e)(4)(ii)(F)(*4*) and (e)(4)(ii)(F)(*5*);

o. Revising paragraph (e)(4)(ii)(G)(*1*);

p. Revising paragraph (e)(4)(ii)(H)(*2*);

q. Revising paragraph (e)(4)(ii)(H)(*3*)(*i*);

r. Revising paragraph (e)(4)(ii)(H)(*4*)(*i*);

s. Revising paragraphs (e)(4)(ii)(I) through (e)(4)(ii)(K);

t. Revising paragraph (e)(4)(ii)(L)(*2*);

u. Revising paragraph (e)(4)(iii);

v. Revising paragraph (e)(4)(iv) introductory text;

w. Revising paragraph (e)(4)(iv)(A) introductory text;

x. Revising paragraph (e)(4)(iv)(B) introductory text;

y. Revising paragraph (e)(4)(iv)(C);

z. Revising paragraph (e)(5) introductory text;

aa. Revising paragraph (e)(5)(i) introductory text;

bb. Revising paragraph (e)(5)(i)(A);

cc. Revising paragraph (e)(5)(ii) introductory text;

dd. Revising paragraph (e)(5)(iii);

ee. Revising paragraph (e)(5)(v);

ff. Revising paragraphs (e)(5)(vii) through (e)(5)(ix);

gg. Revising paragraph (e)(6) introductory text;

hh. Revising paragraphs (e)(6)(i) and (e)(6)(ii);

ii. Revising paragraph (e)(6)(iii)(A);

jj. Revising paragraph (e)(6)(iii)(B);

kk. Revising paragraph (e)(6)(iii)(D) introductory text;

ll. Revising paragraphs (e)(6)(iii)(D)(*2*) through (e)(6)(iii)(D)(*4*);

mm. Revising paragraph (e)(6)(iv);

nn. Revising paragraph (e)(6)(v)(B);

oo. Revising paragraph (e)(6)(vi) through (e)(6)(xi);

pp. Revising paragraph (e)(7) introductory text;

qq. Revising paragraphs (e)(7)(i) through (e)(7)(iii);

rr. Revising paragraph (e)(8);

ss. Revising paragraph (f) introductory text;

tt. Revising paragraph (f)(3) introductory text;

uu. Revising paragraph (g) introductory text;

vv. Revising paragraph (g)(1);

ww. Revising paragraph (g)(2)(ii)(D);

xx. Revising paragraph (g)(3) introductory text;

yy. Revising paragraph (g)(3)(i)(A);

zz. Revising paragraph (g)(4);

aaa. Revising paragraph (h) introductory text;

bbb. Revising paragraph (h)(1) introductory text;

ccc. Revising paragraph (h)(1)(ii)(B);

ddd. Revising paragraph (h)(1)(iv);

eee. Revising paragraph (h)(1)(vi) introductory text;

fff. Revising paragraphs (h)(1)(vi)(B) and (h)(1)(vi)(C);

ggg. Revising paragraph (h)(2)(i);

hhh. Revising paragraph (h)(2)(iii);

iii. Revising paragraph (h)(2)(iv)(A);

jjj. Removing paragraph (b)(1)(i)(D);

kkk. Removing paragraph (d)(10);

lll. Removing and reserving paragraph (c);

mmm. Removing and reserving paragraphs (d)(4) and (d)(5);

nnn. Removing and reserving paragraph (e)(5)(iv);

ooo. Removing and reserving paragraph (e)(6)(iii) (C);

ppp. Adding paragraph (e)(4)(ii)(N);

qqq. Adding paragraphs (e)(5)(x) through (e)(5)(xii);

rrr. Adding paragraph (e)(6)(iii)(D)(*5*);

sss. Adding paragraph (e)(6)(xii);

ttt. Adding paragraph (e)(7)(iv);

uuu. Adding paragraph (e)(7)(v); and

vvv. Adding paragraph (h)(1)(vi)(D).

The revisions and additions read as follows:

§ 63.506 General recordkeeping and reporting provisions.

(a) *Data retention.* Unless otherwise specified in this subpart, the owner or operator of an affected source shall keep copies of all applicable records and reports required by this subpart for at least 5 years, as specified in paragraph (a)(1) of this section, with the exception listed in paragraph (a)(2) of this section.

(1) All applicable records shall be maintained in such a manner that they can be readily accessed. The most recent 6 months of records shall be retained on site or shall be accessible from a central location by computer or other means that provide access within 2 hours after a request. The remaining 4 and one-half years of records may be retained offsite. Records may be maintained in hard copy or computer-readable form including, but not limited to, on microfilm, computer, floppy disk, magnetic tape, or microfiche.

(2) If an owner or operator submits copies of reports to the appropriate EPA Regional Office, the owner or operator is not required to maintain copies of reports. If the EPA Regional Office has waived the requirement of § 63.10(a)(4)(ii) for submittal of copies of reports, the owner or operator is not required to maintain copies of those reports.

(b) * * *

(1) *Start-up, shutdown, and malfunction plan.* The owner or operator of an affected source shall develop and implement a written start-up, shutdown, and malfunction plan as specified in § 63.6(e)(3). This plan shall describe, in detail, procedures for operating and maintaining the affected source during periods of start-up, shutdown, and malfunction and a program for corrective action for malfunctioning process and air pollution control equipment used to comply with this subpart. Inclusion of Group 2 emission points is not required, unless these points are included in an emissions average. For equipment leaks (subject to § 63.502), the start-up, shutdown, and malfunction plan requirement is limited to control devices and is optional for other equipment. For equipment leaks, the start-up, shutdown, and malfunction plan may include written procedures that identify conditions that justify a delay of repair. A provision for ceasing to collect, during a start-up, shutdown, or malfunction, monitoring data that would otherwise be required by the provisions of this subpart may be included in the start-up, shutdown, and

malfunction plan only if the owner or operator has demonstrated to the Administrator, through the Precompliance Report or a supplement to the Precompliance Report, that the monitoring system would be damaged or destroyed if it were not shut down during the start-up, shutdown, or malfunction. The affected source shall keep the start-up, shutdown, and malfunction plan on-site. Records associated with the plan shall be kept as specified in paragraphs (b)(1)(i)(A) through (b)(1)(i)(C) of this section. Reports related to the plan shall be submitted as specified in paragraph (b)(1)(ii) of this section.

(i) *Records of start-up, shutdown, and malfunction.* The owner or operator shall keep the records specified in paragraphs (b)(1)(i)(A) through (b)(1)(i)(C) of this section.

(A) Records of the occurrence and duration of each start-up, shutdown, and malfunction of operation of process equipment or control devices or recovery devices or continuous monitoring systems used to comply with this subpart during which excess emissions (as defined in § 63.480(j)(4)) occur.

(B) For each start-up, shutdown, or malfunction during which excess emissions (as defined in § 63.480(j)(4)) occur, records reflecting whether the procedures specified in the affected source's start-up, shutdown, and malfunction plan were followed, and documentation of actions taken that are not consistent with the plan. For example, if a start-up, shutdown, and malfunction plan includes procedures for routing a control device to a backup control device, records shall be kept of whether the plan was followed. These records may take the form of a ''checklist,'' or other form of recordkeeping that confirms conformance with the start-up, shutdown, and malfunction plan for the event.

(C) Records specified in paragraphs (b)(1)(i)(A) through (b)(1)(i)(B) of this section are not required if they pertain solely to Group 2 emission points that are not included in an emissions average.

(ii) *Reports of start-up, shutdown, and malfunction.* For the purposes of this subpart, the semiannual start-up, shutdown, and malfunction reports shall be submitted on the same schedule as the Periodic Reports required under paragraph (e)(6) of this section instead of the schedule specified in § 63.10(d)(5)(i). The reports shall include the information specified in § 63.10(d)(5)(i).

(2) *Application for approval of construction or reconstruction.* For new affected sources, each owner or operator shall comply with the provisions in § 63.5 regarding construction and reconstruction, excluding the provisions specified in § 63.5(d)(1)(ii)(H), (d)(1)(iii), (d)(2), and (d)(3)(ii).

(c) [Reserved]

(d) *Recordkeeping and documentation.* Owners or operators required to keep continuous records shall keep records as specified in paragraphs (d)(1) through (d)(7) of this section, unless an alternative recordkeeping system has been requested and approved as specified in paragraph (g) of this section, and except as provided in paragraph (h) of this section. If a monitoring plan for storage vessels pursuant to § 63.484(k) requires continuous records, the monitoring plan shall specify which provisions, if any, of paragraphs (d)(1) through (d)(7) of this section apply. As described in § 63.484(k), certain storage vessels are not required to keep continuous records as specified in this paragraph. Owners and operators of such storage vessels shall keep records as specified in the monitoring plan required by § 63.484(k). Paragraphs (d)(8) and (d)(9) of this section specify documentation requirements.

* * * * *

(2) The owner or operator shall record either each measured data value or block average values for 1 hour or shorter periods calculated from all measured data values during each period. If values are measured more frequently than once per minute, a single value for each minute may be used to calculate the hourly (or shorter period) block average instead of all measured values. Owners or operators of batch front-end process vents shall record each measured data value.

(3) Daily average (or batch cycle daily average) values of each continuously monitored parameter shall be calculated for each operating day as specified in paragraphs (d)(3)(i) through (d)(3)(ii) of this section, except as specified in paragraphs (d)(6) and (d)(7) of this section.

(i) The daily average value or batch cycle daily average shall be calculated as the average of all parameter values recorded during the operating day, except as specified in paragraph (d)(7) of this section. For batch front-end process vents, as specified in § 63.491(e)(2)(i), only parameter values measured during those batch emission episodes, or portions thereof, in the batch cycle that the owner or operator has chosen to control shall be used to calculate the average. The calculated average shall cover a 24-hour period if operation is continuous, or the number of hours of operation per operating day if operation is not continuous.

(ii) The operating day shall be the period that the owner or operator specifies in the operating permit or the Notification of Compliance Status for purposes of determining daily average values or batch cycle daily average values of monitored parameters.

(4) [Reserved]

(5) [Reserved]

(6) *Records required when all recorded values are within the established limits.* If all recorded values for a monitored parameter during an operating day are above the minimum level or below the maximum level established in the Notification of Compliance Status or operating permit, the owner or operator may record that all values were above the minimum level or below the maximum level rather than calculating and recording a daily average (or batch cycle daily average) for that operating day.

(7) Monitoring data recorded during periods identified in paragraphs (d)(7)(i) through (d)(7)(v) of this section shall not be included in any average computed under this subpart. Records shall be kept of the times and durations of all such periods and any other periods during process or control device or recovery device operation when monitors are not operating.

(i) Monitoring system breakdowns, repairs, calibration checks, and zero (low-level) and high-level adjustments;

(ii) Start-ups;

(iii) Shutdowns;

(iv) Malfunctions; or

(v) Periods of non-operation of the affected source (or portion thereof), resulting in cessation of the emissions to which the monitoring applies.

(8) For continuous monitoring systems used to comply with this subpart, records documenting the completion of calibration checks, and records documenting the maintenance of continuous monitoring systems that are specified in the manufacturer's instructions or that are specified in other written procedures that provide adequate assurance that the equipment would reasonably be expected to monitor accurately.

(9) The owner or operator of an affected source granted a waiver under § 63.10(f) shall maintain the information, if any, specified by the Administrator as a condition of the waiver of recordkeeping or reporting requirements.

(e) *Reporting and notification.* In addition to the reports and notifications

required by subpart A, as specified in Table 1 of this subpart, the owner or operator of an affected source shall prepare and submit the reports listed in paragraphs (e)(3) through (e)(8) of this section, as applicable. All reports required by this subpart, and the schedule for their submittal, are listed in Table 9 of this subpart.

(1) Owners and operators shall not be in violation of the reporting requirements of this subpart for failing to submit information required to be included in a specified report if the owner or operator meets the requirements in paragraphs (e)(1)(i) through (e)(1)(iii) of this section. Examples of circumstances where this paragraph may apply include information related to newly-added equipment or emission points, changes in the process, changes in equipment required or utilized for compliance with the requirements of this subpart, or changes in methods or equipment for monitoring, recordkeeping, or reporting.

(i) The information was not known in time for inclusion in the report specified by this subpart;

(ii) The owner or operator has been diligent in obtaining the information; and

(iii) The owner or operator submits a report according to the provisions of paragraphs (e)(1)(iii)(A) through (e)(1)(iii)(C) of this section.

(A) If this subpart expressly provides for supplements to the report in which the information is required, the owner or operator shall submit the information as a supplement to that report. The information shall be submitted no later than 60 days after it is obtained, unless otherwise specified in this subpart.

(B) If this subpart does not expressly provide for supplements, but the owner or operator must submit a request for revision of an operating permit pursuant to part 70 or part 71, due to circumstances to which the information pertains, the owner or operator shall submit the information with the request for revision to the operating permit.

(C) In any case not addressed by paragraph (e)(1)(iii)(A) or (e)(1)(iii)(B) of this section, the owner or operator shall submit the information with the first Periodic Report, as required by this subpart, which has a submission deadline at least 60 days after the information is obtained.

(2) All reports required under this subpart shall be sent to the Administrator at the appropriate address listed in § 63.13. If acceptable to both the Administrator and the owner or operator of a source, reports may be submitted on electronic media.

(3) *Precompliance Report.* Owners or operators of affected sources requesting an extension for compliance; requesting approval to use alternative monitoring parameters, alternative continuous monitoring and recordkeeping, or alternative controls; requesting approval to use engineering assessment to estimate emissions from a batch emissions episode, as described in § 63.488(b)(6)(i); wishing to establish parameter monitoring levels according to the procedures contained in § 63.505(c) or (d); or requesting approval to incorporate a provision for ceasing to collect monitoring data, during a start-up, shutdown, or malfunction, into the start-up, shutdown, and malfunction plan, when that monitoring equipment would be damaged if it did not cease to collect monitoring data, as permitted under § 63.480(j)(3), shall submit a Precompliance Report according to the schedule described in paragraph (e)(3)(i) of this section. The Precompliance Report shall contain the information specified in paragraphs (e)(3)(ii) through (e)(3)(viii) of this section, as appropriate.

(i) *Submittal dates.* The Precompliance Report shall be submitted to the Administrator no later than December 19, 2000. If a Precompliance Report was submitted prior to June 19, 2000 and no changes need to be made to that Precompliance Report, the owner or operator shall re-submit the earlier report or submit notification that the previously submitted report is still valid. Unless the Administrator objects to a request submitted in the Precompliance Report within 45 days after its receipt, the request shall be deemed approved. For new affected sources, the Precompliance Report shall be submitted to the Administrator with the application for approval of construction or reconstruction required in paragraph (b)(2) of this section. Supplements to the Precompliance Report may be submitted as specified in paragraph (e)(3)(ix) of this section.

(ii) A request for an extension for compliance, as specified in § 63.481(e), may be submitted in the Precompliance Report. The request for a compliance extension shall include the data outlined in § 63.6(i)(6)(i)(A), (B), and (D), as required in § 63.481(e)(1).

(iii) The alternative monitoring parameter information required in paragraph (f) of this section shall be submitted in the Precompliance Report if, for any emission point, the owner or operator of an affected source seeks to comply through the use of a control technique other than those for which monitoring parameters are specified in this subpart or in subpart G of this part, or seeks to comply by monitoring a different parameter than those specified in this subpart or in subpart G of this part.

(iv) If the affected source seeks to comply using alternative continuous monitoring and recordkeeping as specified in paragraph (g) of this section, the owner or operator shall submit a request for approval in the Precompliance Report.

(v) The owner or operator shall report the intent to use alternative controls to comply with the provisions of this subpart in the Precompliance Report. The Administrator may deem alternative controls to be equivalent to the controls required by the standard, under the procedures outlined in § 63.6(g).

(vi) If a request for approval to use engineering assessment to estimate emissions from a batch emissions episode, as described in § 63.488(b)(6)(i)(C) is being made, the information required by § 63.488(b)(6)(iii)(B) shall be submitted in the Precompliance Report.

(vii) If an owner or operator establishes parameter monitoring levels according to the procedures contained in § 63.505(c) or (d), the following information shall be submitted in the Precompliance Report:

(A) Identification of which procedures (*i.e.*, § 63.505(c) or (d)) are to be used; and

(B) A description of how the parameter monitoring level is to be established. If the procedures in § 63.505(c) are to be used, a description of how performance test data will be used shall be included.

(viii) If the owner or operator is requesting approval to incorporate a provision for ceasing to collect monitoring data, during a start-up, shutdown, or malfunction, into the start-up, shutdown, and malfunction plan, when that monitoring equipment would be damaged if it did not cease to collect monitoring data, the information specified in paragraphs (e)(3)(viii)(A) and (B) shall be supplied in the Precompliance Report or in a supplement to the Precompliance Report. The Administrator shall evaluate the supporting documentation and shall approve the request only if, in the Administrator's judgment, the specific monitoring equipment would be damaged by the contemporaneous start-up, shutdown, or malfunction.

(A) Documentation supporting a claim that the monitoring equipment would be damaged by the contemporaneous start-up, shutdown, or malfunction; and

(B) A request to incorporate such a provision for ceasing to collect monitoring data during a start-up, shutdown, or malfunction, into the start-up, shutdown, and malfunction plan.

(ix) Supplements to the Precompliance Report may be submitted as specified in paragraph (e)(3)(ix)(A), or (e)(3)(ix)(B) of this section. Unless the Administrator objects to a request submitted in a supplement to the Precompliance Report within 45 days after its receipt, the request shall be deemed approved.

(A) Supplements to the Precompliance Report may be submitted to clarify or modify information previously submitted.

(B) Supplements to the Precompliance Report may be submitted to request approval to use alternative monitoring parameters, as specified in paragraph (e)(3)(iii) of this section; to use alternative continuous monitoring and recordkeeping, as specified in paragraph (e)(3)(iv) of this section; to use alternative controls, as specified in paragraph (e)(3)(v) of this section; to use engineering assessment to estimate emissions from a batch emissions episode, as specified in paragraph (e)(3)(vi) of this section; to establish parameter monitoring levels according to the procedures contained in § 63.505(c) or (d), as specified in paragraph (e)(3)(vii) of this section; or to include a provision for ceasing to collect monitoring data during a start-up, shutdown, or malfunction, in the start-up, shutdown, and malfunction plan, when that monitoring equipment would be damaged if it did not cease to collect monitoring data, as specified in paragraph (e)(3)(viii) of this section.

(4) *Emissions Averaging Plan.* For all existing affected sources using emissions averaging, an Emissions Averaging Plan shall be submitted for approval according to the schedule and procedures described in paragraph (e)(4)(i) of this section. The Emissions Averaging Plan shall contain the information specified in paragraph (e)(4)(ii) of this section, unless the information required in paragraph (e)(4)(ii) of this section is submitted with an operating permit application. An owner or operator of an affected source who submits an operating permit application instead of an Emissions Averaging Plan shall submit the information specified in paragraph (e)(8) of this section. In addition, a supplement to the Emissions Averaging Plan, as required under paragraph (e)(4)(iii) of this section, is to be submitted whenever additional alternative controls or operating scenarios may be used to comply with this subpart. Updates to the Emissions Averaging Plan shall be submitted in accordance with paragraph (e)(4)(iv) of this section.

(i) *Submittal and approval.* The Emissions Averaging Plan shall be submitted no later than September 19, 2000, and is subject to Administrator approval. If an Emissions Averaging Plan was submitted prior to June 19, 2000 and no changes need to be made to that Emissions Averaging Plan, the owner or operator shall re-submit the earlier plan or submit notification that the previously submitted plan is still valid. The Administrator shall determine within 120 days whether the Emissions Averaging Plan submitted presents sufficient information. The Administrator shall either approve the Emissions Averaging Plan, request changes, or request that the owner or operator submit additional information. Once the Administrator receives sufficient information, the Administrator shall approve, disapprove, or request changes to the plan within 120 days.

(ii) *Information required.* The Emissions Averaging Plan shall contain the information listed in paragraphs (e)(4)(ii)(A) through (e)(4)(ii)(N) of this section for all emission points included in an emissions average.

* * * * *

(B) The required information shall include the projected emission debits and credits for each emission point and the sum for the emission points involved in the average calculated according to § 63.503. The projected credits shall be greater than or equal to the projected debits, as required under § 63.503(e)(3).

* * * * *

(D) The required information shall include the specific identification of each emission point affected by a pollution prevention measure. To be considered a pollution prevention measure, the criteria in § 63.503(j)(1) shall be met. If the same pollution prevention measure reduces or eliminates emissions from multiple emission points in the average, the owner or operator shall identify each of these emission points.

* * * * *

(F) * * *

(*1*) The required documentation shall include the values of the parameters used to determine whether the emission point is Group 1 or Group 2. Where a TRE index value is used for continuous front-end process vent group determination, the estimated or measured values of the parameters used in the TRE equation in § 63.115(d) and the resulting TRE index value shall be submitted.

(*2*) The required documentation shall include the estimated values of all parameters needed for input to the emission debit and credit calculations in § 63.503(g) and (h). These parameter values shall be specified in the affected source's Emissions Averaging Plan (or operating permit) as enforceable operating conditions. Changes to these parameters shall be reported in an update to the Emissions Averaging Plan, as required by paragraph (e)(4)(iv)(B)(*2*) of this section.

* * * * *

(*4*) The required documentation shall include the anticipated nominal efficiency if a control technology achieving a greater percent emission reduction than the efficiency of the reference control technology is or will be applied to the emission point. The procedures in § 63.503(i) shall be followed to apply for a nominal efficiency, and the report specified in paragraph (e)(7)(ii) of this section shall be submitted with the Emissions Averaging Plan as specified in paragraph (e)(7)(ii)(A) of this section.

(*5*) The required documentation shall include the monitoring plan specified in § 63.122(b), to include the information specified in § 63.120(d)(2)(i) and in either § 63.120(d)(2)(ii) or (d)(2)(iii) for each storage vessel controlled with a closed-vent system using a control device other than a flare.

(G) * * *

(*1*) Each continuous front-end process vent subject to § 63.485 controlled by a pollution prevention measure or control technique for which monitoring parameters or inspection procedures are not specified in § 63.114; and

* * * * *

(H) * * *

(*2*) The required documentation shall include the estimated values of all parameters needed for input to the wastewater emission credit and debit calculations in § 63.503(g)(5) and (h)(5). These parameter values shall be specified in the affected source's Emissions Averaging Plan (or operating permit) as enforceable operating conditions. Changes to these parameters shall be reported as required by paragraph (e)(4)(iv)(B)(*2*) of this section.

(*3*) * * *

(*i*) A control technology that achieves an emission reduction less than or equal to the emission reduction that would otherwise have been achieved by a steam stripper designed to the specifications found in § 63.138(g) is or

will be applied to the wastewater stream, or

* * * * *

(*4*) * * *

(*i*) A control technology that achieves an emission reduction greater than the emission reduction that would have been achieved by a steam stripper designed to the specifications found in § 63.138(g), is or will be applied to the wastewater stream; or

* * * * *

(I) For each pollution prevention measure, treatment process, or control device used to reduce air emissions of organic HAP from wastewater and for which no monitoring parameters or inspection procedures are specified in § 63.143, the information specified in paragraph (f) of this section (Alternative Monitoring Parameters) shall be included in the Emissions Averaging Plan.

(J) The required information shall include documentation of the data required by estimated values of all parameters needed for input to the emission debit and credit calculations in § 63.503(g) and (h) for each process back-end operation included in an emissions average. These values shall be specified in the affected source's Emissions Averaging Plan (or operating permit) as enforceable operating conditions. Changes to these parameters shall be reported as required by paragraph (e)(4)(iv)(B)(*2*) of this section.

(K) The required information shall include documentation of the information required by § 63.503(k). The documentation shall demonstrate that the emissions from the emission points proposed to be included in the average will not result in greater hazard or, at the option of the Administrator, greater risk to human health or the environment than if the emission points were not included in an emissions average.

(L) * * *

(*2*) The required information shall include the estimated values of all parameters needed for input to the emission debit and credit calculations in § 63.503(g) and (h). These parameter values shall be specified in the affected source's Emissions Averaging Plan (or operating permit) as enforceable operating conditions. Changes to these parameters shall be reported as required by paragraph (e)(4)(iv) of this section.

* * * * *

(N) The required information shall include documentation of the data required by § 63.503(k). The documentation shall demonstrate that the emissions from the emission points proposed to be included in the emissions average will not result in greater hazard or, at the option of the Administrator, greater risk to human health or the environment than if the emission points were not included in an emissions average.

(iii) *Supplement to Emissions Averaging Plan.* The owner or operator required to prepare an Emissions Averaging Plan under paragraph (e)(4) of this section shall also prepare a supplement to the Emissions Averaging Plan for any additional alternative controls or operating scenarios that may be used to achieve compliance.

(iv) *Updates to Emissions Averaging Plan.* The owner or operator of an affected source required to submit an Emissions Averaging Plan under paragraph (e)(4) of this section shall also submit written updates of the Emissions Averaging Plan to the Administrator for approval under the circumstances described in paragraphs (e)(4)(iv)(A) through (e)(4)(iv)(C) of this section unless the relevant information has been included and submitted in an operating permit application or amendment.

(A) The owner or operator who plans to make a change listed in either paragraph (e)(4)(iv)(A)(*1*) or (e)(4)(iv)(A)(*2*) of this section shall submit an Emissions Averaging Plan update at least 120 days prior to making the change.

* * * * *

(B) The owner or operator who has made a change as defined in paragraph (e)(4)(iv)(B)(*1*) or (e)(4)(iv)(B)(*2*) of this section shall submit an Emissions Averaging Plan update within 90 days after the information regarding the change is known to the affected source. The update may be submitted in the next quarterly periodic report if the change is made after the date the Notification of Compliance Status is due.

* * * * *

(C) The Administrator shall approve or request changes to the Emissions Averaging Plan update within 120 days of receipt of sufficient information regarding the change for emission points included in emissions averages.

(5) *Notification of Compliance Status.* For existing and new affected sources, a Notification of Compliance Status shall be submitted. For equipment leaks subject to § 63.502, the owner or operator shall submit the information required in § 63.182(c) in the Notification of Compliance Status within 150 days after the first applicable compliance date for equipment leaks in the affected source, and an update shall be provided in the first Periodic Report that is due at least 150 days after each subsequent applicable compliance date for equipment leaks in the affected source. For all other emission points, including heat exchange systems, the Notification of Compliance Status shall contain the information listed in paragraphs (e)(5)(i) through (e)(5)(xii) of this section, as applicable, and shall be submitted no later than 150 days after the compliance dates specified in this subpart.

(i) The results of any emission point group determinations, process section applicability determinations, performance tests, inspections, continuous monitoring system performance evaluations, any other information used to demonstrate compliance, values of monitored parameters established during performance tests, and any other information required to be included in the Notification of Compliance Status under § 63.481(k), § 63.122, and § 63.484 for storage vessels, § 63.117 for continuous front-end process vents, § 63.492 for batch front-end process vents, § 63.499 for back-end process operations, § 63.146 for process wastewater, and § 63.503 for emission points included in an emissions average. In addition, the owner or operator of an affected source shall comply with paragraphs (e)(5)(i)(A) and (e)(5)(i)(B) of this section.

(A) For performance tests, group determinations, and process section applicability determinations that are based on measurements, the Notification of Compliance Status shall include one complete test report, as described in paragraph (e)(5)(i)(B) of this section, for each test method used for a particular kind of emission point. For additional tests performed for the same kind of emission point using the same method, the results and any other information, from the test report, that is requested on a case-by-case basis by the Administrator shall be submitted, but a complete test report is not required.

* * * * *

(ii) For each monitored parameter for which a maximum or minimum level is required to be established under § 63.114(e) and § 63.485(k) for continuous front-end process vents, § 63.489 for batch front-end process vents and aggregate batch vent streams, § 63.497 for back-end process operations, § 63.143(f) for process wastewater, § 63.503(m) for emission points in emissions averages, paragraph (e)(8) of this section, or paragraph (f) of this section, the information specified in paragraphs (e)(5)(ii)(A) through (e)(5)(ii)(E) of this section shall be submitted in the Notification of Compliance Status, unless this

information has been established and provided in the operating permit application. Further, as described in § 63.484(k), for those storage vessels for which the monitoring plan required by § 63.484(k) specifies compliance with the provisions of § 63.505, the owner or operator shall provide the information specified in paragraphs (e)(5)(ii)(A) through (e)(5)(ii)(D) of this section for each monitoring parameter, unless this information has been established and provided in the operating permit application. For those storage vessels for which the monitoring plan required by § 63.484(k) does not require compliance with the provisions of § 63.505, the owner or operator shall provide the information specified in § 63.120(d)(3) as part of the Notification of Compliance Status, unless this information has been established and provided in the operating permit application.

* * * * *

(iii) For emission points included in an emissions average, the Notification of Compliance Status shall contain the values of all parameters needed for input to the emission credit and debit equations in § 63.503(g) and (h), calculated or measured according to the procedures in § 63.503(g) and (h), and the resulting calculation of credits and debits for the first quarter of the year. The first quarter begins on the compliance date specified.

(iv) [Reserved.]

(v) The determination of applicability for flexible operation units as specified in § 63.480(f).

* * * * *

(vii) The results for each predominant use determination made under § 63.480(g), for storage vessels assigned to an affected source subject to this subpart.

(viii) The results for each predominant use determination made under § 63.480(h) for recovery operations equipment assigned to an affected source subject to this subpart.

(ix) For owners and operators of Group 2 batch front-end process vents establishing a batch mass input limitation, as specified in § 63.490(f), the affected source's operating year for purposes of determining compliance with the batch mass input limitation.

(x) If any emission point is subject to this subpart and to other standards as specified in § 63.481(k), and if the provisions of § 63.481(k) allow the owner or operator to choose which testing, monitoring, reporting, and recordkeeping provisions will be followed, then the Notification of Compliance Status shall indicate which rule's requirements will be followed for testing, monitoring, reporting, and recordkeeping.

(xi) An owner or operator who transfers a Group 1 wastewater stream or residual removed from a Group 1 wastewater stream for treatment pursuant to § 63.132(g) shall include in the Notification of Compliance Status the name and location of the transferee and a description of the Group 1 wastewater stream or residual sent to the treatment facility.

(xii) An owner or operator complying with paragraph (h)(1) of this section shall notify the Administrator of the election to comply with paragraph (h)(1) of this section as part of the Notification of Compliance Status, or as part of the appropriate Periodic Report, as specified in paragraph (e)(6)(ix) of this section.

(6) *Periodic Reports.* For existing and new affected sources, the owner or operator shall submit Periodic Reports as specified in paragraphs (e)(6)(i) through (e)(6)(xii) of this section. In addition, for equipment leaks subject to § 63.502, the owner or operator shall submit the information specified in § 63.182(d) under the conditions listed in § 63.182(d), and for heat exchange systems subject to § 63.502(n), the owner or operator shall submit the information specified in § 63.104(f)(2) as part of the Periodic Report required by this paragraph (e)(6). Section § 63.505 shall govern the use of monitoring data to determine compliance for Group 1 emission points and for Group 1 and Group 2 emission points included in emissions averages with the following exception: As discussed in § 63.484(k), for storage vessels to which the provisions of § 63.505 do not apply, as specified in the monitoring plan required by § 63.120(d)(2), the owner or operator is required to comply with the requirements set out in the monitoring plan, and monitoring records may be used to determine compliance.

(i) Except as specified in paragraphs (e)(6)(xi) and (e)(6)(xii) of this section, a report containing the information in paragraph (e)(6)(ii) of this section or paragraphs (e)(6)(iii) through (e)(6)(x) of this section, as appropriate, shall be submitted semiannually no later than 60 days after the end of each 6-month period. The first report shall be submitted no later than 240 days after the date the Notification of Compliance Status is due and shall cover the 6-month period beginning on the date the Notification of Compliance Status is due.

(ii) If none of the compliance exceptions in paragraphs (e)(6)(iii) through (e)(6)(ix) of this section occurred during the 6-month period, the Periodic Report required by paragraph (e)(6)(i) of this section shall be a statement that there were no compliance exceptions as described in this paragraph for the 6-month period covered by that report and that none of the activities specified in paragraphs (e)(6)(iii) through (e)(6)(ix) of this section occurred during the 6-month period covered by that report.

(iii) * * *

(A) All information specified in § 63.122(a)(4) for storage vessels, §§ 63.117(a)(3) and 63.118(f) and 63.485(s)(5) for continuous front-end process vents, § 63.492 for batch front-end process vents and aggregate batch vent streams, § 63.499 for back-end process operations, § 63.104(b)(4) for heat exchange systems, and §§ 63.146(c) through 63.146(f) for process wastewater.

(B) The daily average values or batch cycle daily average values of monitored parameters for all excursions, as defined in § 63.505(g) and § 63.505(h). For excursions caused by lack of monitoring data, the start-time and duration of periods when monitoring data were not collected shall be specified.

(C) [Reserved]

(D) The information in paragraphs (e)(6)(iii)(D)(*1*) through (e)(6)(iii)(D)(*5*) of this section, as applicable:

* * * * *

(*2*) Notification if a process change is made such that the group status of any emission point changes from Group 2 to Group 1. The owner or operator is not required to submit a notification of a process change if that process change caused the group status of an emission point to change from Group 1 to Group 2. However, until the owner or operator notifies the Administrator that the group status of an emission point has changed from Group 1 to Group 2, the owner or operator is required to continue to comply with the Group 1 requirements for that emission point. This notification may be submitted at any time.

(*3*) Notification if one or more emission points (other than equipment leaks) or one or more EPPU is added to an affected source. The owner or operator shall submit the information contained in paragraphs (e)(6)(iii)(D)(*3*)(*i*) through (e)(6)(iii)(D)(*3*)(*ii*) of this section.

(*i*) A description of the addition to the affected source; and

(*ii*) Notification of the group status of the additional emission point or all emission points in the EPPU.

(*4*) Notification if a standard operating procedure, as defined in § 63.500(a)(2), is changed and the change has the potential for increasing the

concentration of carbon disulfide in the crumb dryer exhaust. This notification shall also include test results of the carbon disulfide concentration resulting from the new standard operating procedure.

(*5*) For process wastewater streams sent for treatment pursuant to § 63.132(g), reports of changes in the identity of the treatment facility or transferee.

* * * * *

(iv) For each batch front-end process vent with a batch mass input limitation, every second Periodic Report shall include the mass of HAP or material input to the batch unit operation during the 12-month period covered by the preceding and current Periodic Reports, and a statement of whether the batch front-end process vent was in or out of compliance with the batch mass input limitation.

(v) * * *

(B) For additional tests performed for the same kind of emission point using the same method, results and any other information, pertaining to the performance test, that is requested on a case-by-case basis by the Administrator shall be submitted, but a complete test report is not required.

(vi) Notification of a change in the primary product of an EPPU, in accordance with the provisions in § 63.480(f). This includes a change in primary product from one elastomer product to either another elastomer product or to a non-elastomer product.

(vii) The results for each change made to a predominant use determination made under § 63.480(g) for a storage vessel that is assigned to an affected source subject to this subpart after the change.

(viii) The results for each change made to a predominant use determination made under § 63.480(h) for recovery operations equipment assigned to an affected source subject to this subpart after the change.

(ix) An owner or operator complying with paragraph (h)(1) of this section shall notify the Administrator of the election to comply with paragraph (h)(1) of this section as part of the Periodic Report or as part of the Notification of Compliance Status as specified in paragraph (e)(5)(xi) of this section.

(x) An owner or operator electing not to retain daily average or batch cycle daily average values under paragraph (h)(2) of this section shall notify the Administrator as specified in paragraph (h)(2)(i) of this section.

(xi) The owner or operator of an affected source shall submit quarterly reports for all emission points included in an emissions average as specified in paragraphs (e)(6)(xi)(A) through (e)(6)(xi)(C) of this section.

(A) The quarterly reports shall be submitted no later than 60 days after the end of each quarter. The first report shall be submitted with the Notification of Compliance Status no later than 150 days after the compliance date.

(B) The quarterly reports shall include the information specified in paragraphs (e)(6)(xi)(B)(*1*) through (e)(6)(xi)(B)(*7*) of this section for all emission points included in an emissions average.

(*1*) The credits and debits calculated each month during the quarter;

(*2*) A demonstration that debits calculated for the quarter are not more than 1.30 times the credits calculated for the quarter, as required under § 63.503(e)(4);

(*3*) The values of any inputs to the debit and credit equations in § 63.503(g) and (h) that change from month to month during the quarter or that have changed since the previous quarter;

(*4*) Results of any performance tests conducted during the reporting period including one complete report for each test method used for a particular kind of emission point as described in paragraph (e)(6)(v) of this section;

(*5*) Reports of daily average values or batch cycle daily averages of monitored parameters for excursions as defined in § 63.505(g) or (h);

(*6*) For excursions caused by lack of monitoring data, the duration of periods when monitoring data were not collected shall be specified; and

(*7*) Any other information the affected source is required to report under the operating permit or Emissions Averaging Plan for the affected source.

(C) Every fourth quarterly report shall include the following:

(*1*) A demonstration that annual credits are greater than or equal to annual debits as required by § 63.503(e)(3); and

(*2*) A certification of compliance with all the emissions averaging provisions in § 63.503.

(xii) The owner or operator of an affected source shall submit quarterly reports for particular emission points and process sections not included in an emissions average as specified in paragraphs (e)(6)(xii)(A) through (e)(6)(xii)(D) of this section.

(A) The owner or operator of an affected source shall submit quarterly reports for a period of 1 year for an emission point or process section that is not included in an emissions average if:

(*1*) A control or recovery device for a particular emission point or process section has more excursions, as defined in § 63.505(g) or § 63.505(h), than the number of excused excursions allowed under § 63.505(i) for a semiannual reporting period; or

(*2*) The Administrator requests that the owner or operator submit quarterly reports for the emission point or process section.

(B) The quarterly reports shall include all information specified in paragraphs (e)(6)(iii) through (e)(6)(ix) of this section, as applicable to the emission point or process section for which quarterly reporting is required under paragraph (e)(6)(xii)(A) of this section. Information applicable to other emission points within the affected source shall be submitted in the semiannual reports required under paragraph (e)(6)(i) of this section.

(C) Quarterly reports shall be submitted no later than 60 days after the end of each quarter.

(D) After quarterly reports have been submitted for an emission point for 1 year without more excursions occurring (during that year) than the number of excused excursions allowed under § 63.505(i), the owner or operator may return to semiannual reporting for the emission point or process section.

(7) *Other reports.* Other reports shall be submitted as specified in paragraphs (e)(7)(i) through (e)(7)(v) of this section.

(i) For storage vessels, the notifications of inspections required by § 63.484 shall be submitted, as specified in § 63.122(h)(1) and (h)(2).

(ii) For owners or operators of affected sources required to request approval for a nominal control efficiency for use in calculating credits for an emissions average, the information specified in § 63.503(i) shall be submitted, as specified in paragraph (e)(7)(ii)(A) or (e)(7)(ii)(B) of this section, as appropriate.

(A) If use of a nominal control efficiency is part of the initial Emissions Averaging Plan described in paragraph (e)(4)(ii) of this section, the information in paragraph (e)(7)(iii) of this section shall be submitted with the Emissions Averaging Plan.

(B) If an owner or operator elects to use a nominal control efficiency after submittal of the initial Emissions Averaging Plan as described in paragraph (e)(4)(ii) of this section, the information required by paragraph (e)(7)(ii) of this section shall be submitted at the discretion of the owner or operator.

(iii) For back-end process operations using a control or recovery device to comply with §§ 63.493 through 63.500, the compliance redetermination report required by § 63.499(d) shall be submitted within 180 days after the process change.

(iv) When the conditions of §§ 63.480(f)(3)(iii), (f)(9), or 63.480(f)(10)(iii) are met, reports of changes to the primary product for an EPPU or process unit, as required by §§ 63.480(f)(3)(iii), 63.480(f)(9), or 63.480(f)(10)(iii)(C), respectively, shall be submitted.

(v) Owners or operators of EPPU or emission points (other than equipment leak components subject to § 63.502) that are subject to § 63.480(i)(1) or (i)(2) shall submit a report as specified in paragraphs (e)(7)(v)(A) and (B) of this section.

(A) Reports shall include:

(*1*) A description of the process change or addition, as appropriate;

(*2*) The planned start-up date and the appropriate compliance date, according to § 63.480(i)(1) or (2);

(*3*) Identification of the group status of emission points (except equipment leak components subject to the requirements in § 63.502) specified in paragraphs (e)(7)(v)(A)(*3*)(*i*) through (*iii*) of this section, as applicable.

(*i*) All the emission points in the added EPPU, as described in § 63.480(i)(1).

(*ii*) All the emission points in an affected source designated as a new affected source under § 63.480(i)(2)(i).

(*iii*) All the added or created emission points as described in § 63.480(i)(2)(ii) or (i)(2)(iii).

(*4*) If the owner or operator wishes to request approval to use alternative monitoring parameters, alternative continuous monitoring or recordkeeping, alternative controls, engineering assessment to estimate emissions from a batch emissions episode, or wishes to establish parameter monitoring levels according to the procedures contained in § 63.505(c) or (d), a Precompliance Report shall be submitted in accordance with paragraph (e)(7)(v)(B) of this section.

(B) Reports shall be submitted as specified in paragraphs (e)(7)(v)(B)(*1*) through (e)(7)(v)(B)(*3*) of this section, as appropriate.

(*1*) Owners or operators of an added EPPU subject to § 63.480(i)(1) shall submit a report no later than 180 days prior to the compliance date for the EPPU.

(*2*) Owners or operators of an affected source designated as a new affected source under § 63.480(i)(2)(i) shall submit a report no later than 180 days prior to the compliance date for the affected source.

(*3*) Owners and operators of any emission point (other than equipment leak components subject to § 63.502) subject to § 63.480(i)(2)(ii) or (i)(2)(iii) shall submit a report no later than 180 days prior to the compliance date for those emission points.

(8) *Operating permit application.* An owner or operator who submits an operating permit application instead of an Emissions Averaging Plan or a Precompliance Report shall include the following information with the operating permit application:

* * * * *

(f) *Alternative monitoring parameters.* The owner or operator of an affected source who has been directed by any section of this subpart, or any section of another subpart referenced by this subpart, that expressly references this paragraph (f) or § 63.151(f) to set unique monitoring parameters, or who requests approval to monitor a different parameter than those listed in § 63.484 for storage vessels, § 63.114 for continuous front-end process vents, § 63.489 for batch front-end process vents and aggregate batch vent streams, § 63.497 for back-end process operations, or § 63.143 for process wastewater shall submit the information specified in paragraphs (f)(1) through (f)(3) of this section in the Precompliance Report, as required by paragraph (e)(3) of this section. The owner or operator shall retain for a period of 5 years each record required by paragraphs (f)(1) through (f)(3) of this section.

(3) The required information shall include a description of the proposed monitoring, recordkeeping, and reporting system, to include the frequency and content of monitoring, recordkeeping, and reporting. Further, the rationale for the proposed monitoring, recordkeeping, and reporting system shall be included if either condition in paragraph (f)(3)(i) or (f)(3)(ii) of this section is met:

* * * * *

(g) *Alternative continuous monitoring and recordkeeping.* An owner or operator choosing not to implement the continuous parameter operating and recordkeeping provisions listed in § 63.485 for continuous front-end process vents, § 63.486 for batch front-end process vents and aggregate batch vent streams, § 63.493 for back-end process operations, and § 63.501 for process wastewater, may instead request approval to use alternative continuous monitoring and recordkeeping provisions according to the procedures specified in paragraphs (g)(1) through (g)(4) of this section. Requests shall be submitted in the Precompliance Report as specified in paragraph (e)(3)(iv) of this section, if not already included in the operating permit application, and shall contain the information specified in paragraphs (g)(2)(ii) and (g)(3)(ii) of this section, as applicable.

(1) The provisions in § 63.8(f)(5)(i) shall govern the review and approval of requests.

(2) * * *

(ii) * * *

(D) Demonstration to the Administrator's satisfaction that the proposed monitoring frequency is sufficient to represent control or recovery device operating conditions, considering typical variability of the specific process and control or recovery device operating parameter being monitored.

(3) An owner or operator may request approval to use an automated data compression recording system that does not record monitored operating parameter values at a set frequency, but that records all values that meet set criteria for variation from previously recorded values, in accordance with paragraphs (g)(3)(i) and (g)(3)(ii) of this section.

(i) * * *

(A) Measure the operating parameter value at least once during every 15 minute period;

* * * * *

(4) An owner or operator may request approval to use other alternative monitoring systems according to the procedures specified in § 63.8(f)(4).

(h) *Reduced recordkeeping program.* For any parameter with respect to any item of equipment, the owner or operator may implement the recordkeeping requirements in paragraph (h)(1) or (h)(2) of this section as alternatives to the continuous operating parameter monitoring and recordkeeping provisions that would otherwise apply under this subpart. The owner or operator shall retain for a period of 5 years each record required by paragraph (h)(1) or (h)(2) of this section, except as otherwise provided in paragraph (h)(1)(vi)(D) of this section.

(1) The owner or operator may retain only the daily average or the batch cycle daily average value, and is not required to retain more frequent monitored operating parameter values, for a monitored parameter with respect to an item of equipment, if the requirements of paragraphs (h)(1)(i) through (h)(1)(vi) of this section are met. An owner or operator electing to comply with the requirements of paragraph (h)(1) of this section shall notify the Administrator in the Notification of Compliance Status as specified in paragraph (e)(5)(xii) of this section, or, if the Notification of Compliance Status has already been submitted, in the Periodic Report

immediately preceding implementation of the requirements of paragraph (h)(1) of this section, as specified in paragraph (e)(6)(ix) of this section.

* * * * *

(ii) * * *

(B) The running average is based on at least six one-hour average values; and

* * * * *

(iv) The monitoring system will alert the owner or operator by an alarm or other means, if the running average parameter value calculated under paragraph (h)(1)(ii) of this section reaches a set point that is appropriately related to the established limit for the parameter that is being monitored.

* * * * *

(vi) The owner or operator shall retain the records identified in paragraphs (h)(1)(vi)(A) through (h)(1)(vi)(D) of this section.

* * * * *

(B) A description of the applicable monitoring system(s), and how compliance will be achieved with each requirement of paragraphs (h)(1)(i) through (h)(1)(v) of this section. The description shall identify the location and format (*e.g.*, on-line storage, log entries) for each required record. If the description changes, the owner or operator shall retain both the current and the most recent superseded description. The description, and the most recent superseded description, shall be retained as provided in paragraph (a) of this section, except as provided in paragraph (h)(1)(vi)(D) of this section.

(C) A description, and the date, of any change to the monitoring system that would reasonably be expected to impair its ability to comply with the requirements of paragraph (h)(1) of this section.

(D) Owners and operators subject to paragraph (h)(1)(vi)(B) of this section shall retain the current description of the monitoring system as long as the description is current. The current description shall, at all times, be retained on-site or be accessible from a central location by computer or other means that provides access within 2 hours after a request. The owner or operator shall retain all superseded descriptions for at least 5 years after the date of their creation. Superseded descriptions shall be retained on-site (or accessible from a central location by computer or other means that provides access within 2 hours after a request) for at least 6 months after their creation. Thereafter, superseded descriptions may be stored off-site.

(2) * * *

(i) If the owner or operator elects not to retain the daily average or batch cycle daily average values, the owner or operator shall notify the Administrator in the next Periodic Report as specified in paragraph (e)(6)(x) of this section. The notification shall identify the parameter and unit of equipment.

* * * * *

(iii) The owner or operator shall retain the records specified in paragraphs (h)(1)(i) through(h)(1)(iii) of this section, for the duration specified in paragraph (h) of this section. For any calendar week, if compliance with paragraphs (h)(1)(i) through (h)(1)(iii) of this section does not result in retention of a record of at least one occurrence or measured parameter value, the owner or operator shall record and retain at least one parameter value during a period of operation other than a start-up, shutdown, or malfunction.

(iv) * * *

(A) The daily average or batch cycle daily average value during any start-up, shutdown, or malfunction shall not be considered an excursion for purposes of paragraph (h)(2) of this section, if the owner or operator follows the applicable provisions of the start-up, shutdown, and malfunction plan required by § 63.6(e)(3).

* * * * *

28a. Revise Tables 1, 2, 5, 6, 7, and 8, and add Table 9 to Subpart U of part 63, to read as follows:

TABLE 1 TO SUBPART U OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART U AFFECTED SOURCES

Reference	Applies to subpart U	Explanation
63.1(a)(1)	Yes	§ 63.482 specifies definitions in addition to or that supersede definitions in § 63.2.
63.1(a)(2)	Yes	
63.1(a)(3)	Yes	§ 63.481(f) through (k) and § 63.160(b) identify those standards which may apply in addition to the requirements of subparts U and H of this part, and specify how compliance shall be achieved.
63.1(a)(4)	Yes	Subpart U (this table) specifies the applicability of each paragraph in subpart A to subpart U.
63.1(a)(5)	No	[Reserved.]
63.1(a)(6)–63.1(a)(8)	Yes	
63.1(a)(9)	No	[Reserved.]
63.1(a)(10)	Yes	
63.1(a)(11)	Yes	
63.1(a)(12)–63.1(a)(14)	Yes	
63.1(b)(1)	No	§ 63.480(a) contains specific applicability criteria.
63.1(b)(2)	Yes	
63.1(b)(3)	No	§ 63.480(b) provides documentation requirements for EPPUs not considered affected sources.
63.1(c)(1)	Yes	Subpart U (this table) specifies the applicability of each paragraph in subpart A to subpart U.
63.1(c)(2)	No	Area sources are not subject to subpart U.
63.1(c)(3)	No	[Reserved.]
63.1(c)(4)	Yes	
63.1(c)(5)	Yes	Except that affected sources are not required to submit notifications that are not required by subpart U.
63.1(d)	No	[Reserved.]
63.1(e)	Yes	
63.2	Yes	§ 63.482 specifies those subpart A definitions that apply to subpart U.
63.3	Yes	
63.4(a)(1)–63.4(a)(3)	Yes	
63.4(a)(4)	No	[Reserved.]

TABLE 1 TO SUBPART U OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART U AFFECTED SOURCES—Continued

Reference	Applies to subpart U	Explanation
63.4(a)(5)	Yes	
63.4(b)	Yes	
63.4(c)	Yes	
63.5(a)(1)	Yes	Except the terms ''source'' and ''stationary source'' should be interpreted as having the same meaning as ''affected source''.
63.5(a)(2)	Yes	
63.5(b)(1)	Yes	Except § 63.480(i) defines when construction or reconstruction is subject to new source standards.
63.5(b)(2)	No	[Reserved.]
63.5(b)(3)	Yes.	
63.5(b)(4)	Yes	Except that the Initial Notification and § 63.9(b) requirements do not apply.
63.5(b)(5)	Yes.	
63.5(b)(6)	Yes	Except that § 63.480(i) defines when construction or reconstruction is subject to the new source standards.
63.5(c)	No	[Reserved.]
63.5(d)(1)(i)	Yes	Except that the references to the Initial Notification and § 63.9(b)(5) do not apply.
63.5(d)(1)(ii)	Yes	Except that § 63.5(d)(1)(ii)(H) does not apply.
63.5(d)(1)(iii)	No	§ 63.506(e)(5) and § 63.502(f) specify Notification of Compliance Status requirements.
63.5(d)(2)	No.	
63.5(d)(3)	Yes	Except § 63.5(d)(3)(ii) does not apply, and equipment leaks subject to § 63.502 are exempt.
63.5(d)(4)	Yes.	
63.5(e)	Yes.	
63.5(f)(1)	Yes.	
63.5(f)(2)	Yes	Except that where § 63.9(b)(2) is referred to, the owner or operator need not comply.
63.6(a)	Yes.	
63.6(b)(1)	No	The dates specified in § 63.481(b) apply, instead.
63.6(b)(2)	No.	
63.6(b)(3)	No.	
63.6(b)(4)	No.	
63.6(b)(5)	No.	
63.6(b)(6)	No	[Reserved.]
63.6(b)(7)	No.	
63.6(c)(1)	Yes	§ 63.481 specifies the compliance date.
63.6(c)(2)	No.	
63.6(c)(3)	No	[Reserved.]
63.6(c)(4)	No	[Reserved.]
63.6(c)(5)	Yes.	
63.6(d)	No	[Reserved.]
63.6(e)	Yes	Except as otherwise specified for individual paragraphs. Does not apply to Group 2 emission points, unless they are included in an emissions average.[a]
63.6(e)(1)(i)	No	This is addressed by § 63.480(j)(4).
63.6(e)(1)(ii)	Yes.	
63.6(e)(1)(iii)	Yes.	
63.6(e)(2)	Yes.	
63.6(e)(3)(i)	Yes	For equipment leaks (subject to § 63.502), the start-up, shutdown, and malfunction plan requirement of § 63.6(e)(3)(i) is limited to control devices and is optional for other equipment. The start-up, shutdown, and malfunction plan may include written procedures that identify conditions that justify a delay of repair.
63.6(e)(3)(i)(A)	No	This is addressed by § 63.480(j)(4).
63.6(e)(3)(i)(B)	Yes.	
63.6(e)(3)(i)(C)	Yes.	
63.6(e)(3)(ii)	Yes.	
63.6(e)(3)(iii)	No	Recordkeeping and reporting are specified in § 63.506(b)(1).
63.6(e)(3)(iv)	No	Recordkeeping and reporting are specified in § 63.506(b)(1).
63.6(e)(3)(v)	Yes.	
63.6(e)(3)(vi)	Yes.	
63.6(e)(3)(vii)	Yes.	
63.6(e)(3)(vii)(A)	Yes.	
63.6(e)(3)(vii)(B)	Yes	Except the plan shall provide for operation in compliance with § 63.480(j)(4).
63.6(e)(3)(vii)(C)	Yes.	
63.6(e)(3)(viii)	Yes.	
63.6(f)(1)	Yes.	
63.6(f)(2)	Yes	Except 63.7(c), as referred to in § 63.6(f)(2)(iii)(D) does not apply, and except that § 63.6(f)(2)(ii) does not apply to equipment leaks subject to § 63.502.
63.6(f)(3)	Yes.	

TABLE 1 TO SUBPART U OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART U AFFECTED SOURCES—Continued

Reference	Applies to subpart U	Explanation
63.6(g)	Yes.	
63.6(h)	No	Subpart U does not require opacity and visible emission standards.
63.6(i)(1)	Yes.	
63.6(i)(2)	Yes.	
63.6(i)(3)	Yes.	
63.6(i)(4)(i)(A)	Yes.	
63.6(i)(4)(i)(B)	No	Dates are specified in § 63.481(e) and § 63.506(e)(3)(i).
63.6(i)(4)(ii)	No.	
63.6(i)(5)–(14)	Yes.	
63.6(i)(15)	No	[Reserved.]
63.6(i)(16)	Yes.	
63.6(j)	Yes.	
63.7(a)(1)	Yes.	
63.7(a)(2)	No	§ 63.506(e)(5) specifies the submittal dates of performance test results for all emission points except equipment leaks; for equipment leaks, compliance demonstration results are reported in the Periodic Reports.
63.7(a)(3)	Yes.	
63.7(b)	No	§ 63.504(a)(4) specifies notification requirements.
63.7(c)	No	Except if the owner or operator chooses to submit an alternative nonopacity emission standard for approval under § 63.6(g).
63.7(d)	Yes.	
63.7(e)(1)	Yes	Except that all performance tests shall be conducted at maximum representative operating conditions achievable at the time without disruption of operations or damage to equipment.
63.7(e)(2)	Yes.	
63.7(e)(3)	No	Subpart U specifies requirements.
63.7(e)(4)	Yes.	
63.7(f)	Yes	Except that § 63.144(b)(5)(iii)(A) & (B) shall apply for process wastewater. Also, since a site specific test plan is not required, the notification deadline in § 63.7(f)(2)(i) shall be 60 days prior to the performance test, and in § 63.7(f)(3) approval or disapproval of the alternative test method shall not be tied to the site specific test plan.
63.7(g)	Yes	Except that the requirements in § 63.506(e)(5) shall apply instead of references to the Notification of Compliance Status report in 63.9(h). In addition, equipment leaks subject to § 63.502 are not required to conduct performance tests.
63.7(h)	Yes	Except § 63.7(h)(4)(ii) is not applicable, since the site-specific test plans in § 63.7(c)(2) are not required.
63.8(a)(1)	Yes.	
63.8(a)(2)	No.	
63.8(a)(3)	No	[Reserved.]
63.8(a)(4)	Yes.	
63.8(b)(1)	Yes.	
63.8(b)(2)	No	Subpart U specifies locations to conduct monitoring.
63.8(b)(3)	Yes.	
63.8(c)(1)	Yes.	
63.8(c)(1)(i)	Yes.	
63.8(c)(1)(ii)	No	For all emission points except equipment leaks, comply with § 63.506(b)(1)(i)(B); for equipment leaks, comply with § 63.181(g)(2)(iii).
63.8(c)(1)(iii)	Yes.	
63.8(c)(2)	Yes.	
63.8(c)(3)	Yes.	
63.8(c)(4)	No	§ 63.505 specifies monitoring frequency; not applicable to equipment leaks, because § 63.502 does not require continuous monitoring systems.
63.8(c)(5)–63.8(c)(8)	No.	
63.8(d)	No.	
63.8(e)	No.	
63.8(f)(1)–63.8(f)(3)	Yes.	
63.8(f)(4)(i)	No	Timeframe for submitting request is specified in § 63.506(f) or (g); not applicable to equipment leaks, because § 63.502 (through reference to subpart H) specifies acceptable alternative methods.
63.8(f)(4)(ii)	No	Contents of request are specified in § 63.506(f) or (g).
63.8(f)(4)(iii)	No.	
63.8(f)(5)(i)	Yes.	
63.8(f)(5)(ii)	No.	
63.8(f)(5)(iii)	Yes.	
63.8(f)(6)	No	Subpart U does not require CEM's.
63.8(g)	No	Data reduction procedures specified in § 63.506(d) and (h); not applicable to equipment leaks.
63.9(a)	Yes.	

TABLE 1 TO SUBPART U OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART U AFFECTED SOURCES—Continued

Reference	Applies to subpart U	Explanation
63.9(b)	No	Subpart U does not require an initial notification.
63.9(c)	Yes.	
63.9(d)	Yes.	
63.9(e)	No	§ 63.504(a)(4) specifies notification deadline.
63.9(f)	No	Subpart U does not require opacity and visible emission standards.
63.9(g)	No.	
63.9(h)	No	§ 63.506(e)(5) specifies Notification of Compliance Status requirements.
63.9(i)	Yes.	
63.9(j)	No.	
63.10(a)	Yes.	
63.10(b)(1)	No	§ 63.506(a) specifies record retention requirements.
63.10(b)(2)	No	Subpart U specifies recordkeeping requirements.
63.10(b)(3)	No	§ 63.480(b) requires documentation of sources that are not affected sources.
63.10(c)	No	§ 63.506 specifies recordkeeping requirements.
63.10(d)(1)	Yes.	
63.10(d)(2)	No	§ 63.506(e)(5) specifies performance test reporting requirements; not applicable to equipment leaks.
63.10(d)(3)	No	Subpart U does not require opacity and visible emission standards.
63.10(d)(4)	Yes.	
63.10(d)(5)(i)	Yes	Except that reports required by § 63.10(d)(5)(i) shall be submitted at the same time as Periodic Reports specified in § 63.506(e)(6). The start-up, shutdown, and malfunction plan, and any records or reports of start-up, shutdown, and malfunction do not apply to Group 2 emission points unless they are included in an emissions average.
63.10(d)(5)(ii)	No.	
63.10(e)	No	§ 63.506 specifies reporting requirements.
63.10(f)	Yes.	
63.11	Yes	Except that instead of § 63.11(b), § 63.504(c) shall apply.
63.12	Yes	Except that the authority of § 63.503(i) and the authority of § 63.177 (for equipment leaks) will not be delegated to States.
63.13–63.15	Yes.	

[a] The plan and any records or reports of start-up, shutdown, and malfunction do not apply to Group 2 emission points unless they are included in an emissions average.

TABLE 2 TO SUBPART U OF PART 63—APPLICABILITY OF SUBPARTS F, G, & H OF THIS PART TO SUBPART U AFFECTED SOURCES

Reference	Applies to subpart U	Explanation	Applicable section of subpart U
Subpart F			
63.100	No.		
63.101	Yes	Several definitions from 63.101 are referenced in 63.482	63.482
63.102–63.103	No.		
63.104–63.105	Yes		63.501 and 63.502
63.106–63.109	No.		
Subpart G			
63.110	No.		
63.111	Yes	Several definitions from 63.111 are referenced in 63.482	63.482
63.112	No.		
63.113–63.118	Yes	With the differences noted in 63.485(b) through 63.485(k)	63.485
63.119–63.123	Yes	With the differences noted in 63.484(c) through 63.484(s)	63.484
63.124–63.125	No	[Reserved.].	
63.126–63.130	No.		
63.131–63.147	Yes	With the differences noted in 63.501(a)(1) through 63.501(a)(19)	63.501
63.148–63.149	Yes	With the differences noted in 63.484(c) through 63.484(s) and 63.501(a)(1) through 63.501(a)(23).	63.484 and 63.501
63.150(a) through 63.150(f).	No.		
63.150(g)(1) and 63.150(g)(2).	No.		
63.150(g)(3)	Yes		63.503(g)(3)
63.150(g)(4)	No.		
63.150(g)(5)	Yes		63.503(g)(5)
63.150(h)(1) and 63.150(h)(2).	No.		
63.150(h)(3)	Yes		63.503(h)(3)
63.150(h)(4)	No.		

TABLE 2 TO SUBPART U OF PART 63—APPLICABILITY OF SUBPARTS F, G, & H OF THIS PART TO SUBPART U AFFECTED SOURCES—Continued

Reference	Applies to subpart U	Explanation	Applicable section of subpart U
63.150(h)(5)	Yes		63.503(h)(5)
63.150(i) through 63.150(o).	No.		
63.151–63.152	No.		
Subpart H			
63.160–63.183	Yes	Subpart U affected sources shall comply with all requirements of subpart H of this part, with the differences noted in § 63.502.	63.502

* * * * *

TABLE 5 TO SUBPART U OF PART 63—KNOWN ORGANIC HAP EMITTED FROM THE PRODUCTION OF ELASTOMER PRODUCTS

Organic HAP/chemical name (CAS No.)	Elastomer product/subcategory											
	BR	EPI	EPR	HBR	HYP	NEO	NBL	NBR	PBR/ SBRS	PSR	SBL	SBRE
Acrylonitrile (107131)							✔	✔				
1,3 Butadiene (106990)							✔	✔	✔		✔	✔
Carbon Disulfide (75150)												✔
Carbon Tetrachloride (56235)					✔							
Chlorobenzene (108907)					✔							
Chloroform (67663)					✔							
Chloroprene (126998)						✔						
Epichlorohydrin (106898)		✔										
Ethylbenzene (100414)	✔										✔	
Ethylene Dichloride (107062)										✔		
Ethylene Oxide (75218)		✔								✔		
Formaldehyde (50000)										✔		
Hexane (110543)	✔		✔						✔			
Methanol (67561)	✔								✔			
Methyl Chloride (74873)	✔				✔							
Propylene Oxide (75569)		✔										
Styrene (100425)									✔		✔	✔
Toluene (108883)		✔	✔			✔			✔			
Xylenes (1330207)	✔											
Xylene (m-) (108383)	✔										✔	
Xylene (o-) (95476)	✔										✔	
Xylene (p-) (106423)	✔										✔	

CAS No. = Chemical Abstract Service Number
BR = Butyl Rubber
EPI = Epichlorohydrin Rubber
EPR = Ethylene Propylene Rubber
HBR = Halobutyl Rubber
HYP = Hypalon™
NEO = Neoprene
NBL = Nitrile Butadiene Latex
NBR = Nitrile Butadiene Rubber
PBR/SBRS = Polybutadiene and Styrene Butadiene Rubber by Solution
PSR = Polysulfide Rubber
SBL = Styrene Butadiene Latex
SBRE = Styrene Butadiene Rubber by Emulsion

TABLE 6 TO SUBPART U OF PART 63—GROUP 1 BATCH FRONT-END PROCESS VENTS AND AGGREGATE BATCH VENT STREAMS—MONITORING, RECORDKEEPING, AND REPORTING REQUIREMENTS

Control/recovery device	Parameter to be monitored	Recordkeeping and reporting requirements for monitored parameters
Thermal Incinerator	Firebox temperature [a]	1. Continuous records as specified in § 63.491(e)(1) [b]. 2. Record and report the average firebox temperature measured during the performance test NCS [c]. 3. Record the batch cycle daily average firebox temperature as specified in § 63.491(e)(2). 4. Report all batch cycle daily average temperatures that are below the minimum operating value established in the NCS or operating permit and all instances when monitoring data are not collected—PR [d e].
Catalytic Incinerator	Temperature upstream and downstream of the catalyst bed.	1. Continuous records as specified in § 63.491(e)(1) [b]. 2. Record and report the average upstream and downstream temperatures and the average temperature difference across the catalyst bed measured during the performance test NCS [c]. 3. Record the batch cycle daily average upstream temperature and temperature difference across catalyst bed as specified in § 63.491(e)(2). 4. Report all batch cycle daily average upstream temperatures that are below the minimum upstream value established in the NCS or operating permit PR [d e]. 5. Report all batch cycle daily average temperature differences across the catalyst bed that are below the minimum difference established in the NCS or operating permit—PR [d e]. 6. Report all instances when monitoring data are not collected.
Boiler or Process Heater with a design heat input capacity less than 44 megawatts and where the batch front-end process vents or aggregate batch vent streams are *not* introduced with or used as the primary fuel.	Firebox temperature [a]	1. Continuous records as specified in § 63.491(e)(1). [b] 2. Record and report the average firebox temperature measured during the performance test—NCS. [c] 3. Record the batch cycle daily average firebox temperature as specified in § 63.491(e)(2). [d] 4. Report all batch cycle daily average temperatures that are below the minimum operating value established in the NCS or operating permit and all instances when monitoring data are not collected—PR. [d e]
Flare	Presence of a flame at the pilot light	1. Hourly records of whether the monitor was continuously operating during batch emission episodes selected for control and whether a flame was continuously present at the pilot light during each hour. 2. Record and report the presence of a flame at the pilot light over the full period of the compliance determination—NCS. [c] 3. Record the times and durations of all periods during batch emission episodes when all flames at the pilot light of a flare are absent or the monitor is not operating. 4. Report the times and durations of all periods during batch emission episodes selected for control when all flames at the pilot light of a flare are absent—PR. [d]

TABLE 6 TO SUBPART U OF PART 63—GROUP 1 BATCH FRONT-END PROCESS VENTS AND AGGREGATE BATCH VENT STREAMS—MONITORING, RECORDKEEPING, AND REPORTING REQUIREMENTS—Continued

Control/recovery device	Parameter to be monitored	Recordkeeping and reporting requirements for monitored parameters
Scrubber for halogenated batch front-end process vents or aggregate batch vent streams (Note: Controlled by a combustion device other than a flare).	pH of scrubber effluent, and	1. Continuous records as specified in §63.491(e)(1).[b] 2. Record and report the average pH of the scrubber effluent measured during the performance test—NCS.[c] 3. Record the batch cycle daily average pH of the scrubber effluent as specified in §63.491(e)(2). 4. Report all batch cycle daily average pH values of the scrubber effluent that are below the minimum operating value established in the NCS or operating permit and all instances when insufficient monitoring data are collected—PR.[d e]
Scrubber for halogenated batch front-end process vents or aggregate batch vent streams (Note: Controlled by a combustion device other than a flare) (Continued).	Scrubber liquid and gas flow rates [§63.489 (b)(4)(ii)].	1. Records as specified in §63.491(e)(1).[b] 2. Record and report the scrubber liquid/gas ratio averaged over the full period of the performance test—NCS.[c] 3. Record the batch cycle daily average scrubber liquid/gas ratio as specified in §63.491(e)(2). 4. Report all batch cycle daily average scrubber liquid/gas ratios that are below the minimum value established in the NCS or operating permit and all instances when insufficient monitoring data are collected—PR.[d e]
Absorber[f]	Exit temperature of the absorbing liquid, and	1. Continuous records as specified in §63.491(e)(1).[b] 2. Record and report the average exit temperature of the absorbing liquid measured during the performance test—NCS.[c] 3. Record the batch cycle daily average exit temperature of the absorbing liquid as specified in §63.491(e)(2) for each batch cycle. 4. Report all the batch cycle daily average exit temperatures of the absorbing liquid that are below the minimum absorbing liquid exit temperature established in the NCS or operating permit and all instances when monitoring data are not collected—PR.[d e]
.....	Exit specific gravity of the absorbing liquid	1. Continuous records as specified in §63.491(e)(1).[b] 2. Record and report the average exit specific gravity measured during the performance test—NCS. 3. Record the batch cycle daily average exit specific gravity as specified in §63.491(e)(2). 4. Report all batch cycle daily average exit specific gravity values that are below the minimum operating value established in the NCS or operating permit and all instances when monitoring data are not collected—PR.[d e]
Condenser[f]	Exit (product side) temperature	1. Continuous records as specified in §63.491(e)(1).[b] 2. Record and report the average exit temperature measured during the performance test—NCS. 3. Record the batch cycle daily average exit temperature as specified in §63.491(e)(2).

TABLE 6 TO SUBPART U OF PART 63—GROUP 1 BATCH FRONT-END PROCESS VENTS AND AGGREGATE BATCH VENT STREAMS—MONITORING, RECORDKEEPING, AND REPORTING REQUIREMENTS—Continued

Control/recovery device	Parameter to be monitored	Recordkeeping and reporting requirements for monitored parameters
		4. Report all batch cycle daily average exit temperatures that are above the maximum operating value established in the NCS or operating permit and all instances when monitoring data are not collected—PR.[d, e]
Carbon Adsorber[f]	Total regeneration steam flow or nitrogen flow, or pressure (gauge or absolute) during carbon bed regeneration cycle(s), and.	1. Record of total regeneration steam flow or nitrogen flow, or pressure for each carbon bed regeneration cycle. 2. Record and report the total regeneration steam flow or nitrogen flow, or pressure during each carbon bed regeneration cycle during the performance test—NCS.[c] 3. Report all carbon bed regeneration cycles when the total regeneration steam flow or nitrogen flow, or pressure is above the maximum value established in the NCS or operating permit—PR.[d, e]
	Temperature of the carbon bed after regeneration and within 15 minutes of completing any cooling cycle(s).	1. Record the temperature of the carbon bed after each regeneration and within 15 minutes of completing any cooling cycle(s). 2. Record and report the temperature of the carbon bed after each regeneration and within 15 minutes of completing any cooling cycle(s) measured during the performance test—NCS.[c] 3. Report all carbon bed regeneration cycles when the temperature of the carbon bed after regeneration, or within 15 minutes of completing any cooling cycle(s), is above the maximum value established in the NCS or operating permit—PR.[d, e]
All Control Devices	Diversion to the atmosphere from the control device *or*.	1. Hourly records of whether the flow indicator was operating during batch emission episodes selected for control and whether a diversion was detected at any time during the hour, as specified in § 63.491(e)(3). 2. Record and report the times of all periods during batch emission episodes selected for control when emissions are diverted through a bypass line, or the flow indicator is not operating—PR[d]
	Monthly inspections of sealed valves	1. Records that monthly inspections were performed as specified in § 63.491(e)(4)(i). 2. Record and report all monthly inspections that show that valves are in the diverting position or that a seal has been broken—PR[d]
Absorber, Condenser, and Carbon Adsorber (as an alternative to the above).	Concentration level or reading indicated by an organic monitoring device at the outlet of the recovery device.	1. Continuous records as specified in § 63.491(e)(1).[b] 2. Record and report the average batch vent concentration level or reading measured during the performance test—NCS. 3. Record the batch cycle daily average concentration level or reading as specified in § 63.491(e)(2). 4. Report all batch cycle daily average concentration levels or readings that are above the maximum values established in the NCS or operating permit and all instances when monitoring data are not collected—PR.[d, e]

[a] Monitor may be installed in the firebox or in the duct work immediately downstream of the firebox before any substantial heat exchange is encountered.

[b] ''Continuous records'' is defined in § 63.111.

[c] ''NCS = Notification of Compliance Status described in § 63.506(e)(5).

[d] PR = Periodic Reports described in § 63.506(e)(6) of this subpart.

[e] The periodic reports shall include the duration of periods when monitoring data are not collected as specified in § 63.506(e)(6)(iii)(C) of this subpart.

[f] Alternatively, these devices may comply with the organic monitoring device provisions listed at the end of this table.

TABLE 7 TO SUBPART U OF PART 63—OPERATING PARAMETERS FOR WHICH MONITORING LEVELS ARE REQUIRED TO BE ESTABLISHED FOR CONTINUOUS AND BATCH FRONT-END PROCESS VENTS AND AGGREGATE BATCH VENT STREAMS

Control/recovery device	Parameters to be monitored	Established operating parameter(s)
Thermal incinerator	Firebox temperature	Minimum temperature.
Catalytic incinerator	Temperature upstream and downstream of the catalyst bed	Minimum upstream temperature; and minimum temperature difference across the catalyst bed.
Boiler or process heater	Firebox temperature	Minimum temperature.
Scrubber for halogenated vents	pH of scrubber effluent; and scrubber liquid and gas flow rates [§ 63.489(b)(4)(ii)]	Minimum pH; and minimum liquid/gas ratio.
Absorber	Exit temperature of the absorbing liquid; and exit specific gravity of the absorbing liquid.	Maximum temperature; and maximum specific gravity.
Condenser	Exit temperature	Maximum temperature.
Carbon adsorber	Total regeneration steam flow or nitrogen flow, or pressure (gauge or absolute)[a] during carbon bed regeneration cycle; and temperature of the carbon bed after regeneration (and within 15 minutes of completing any cooling cycle(s)).	Maximum flow or pressure; and maximum temperature.
Other devices (or as an alternate to the above)[b].	HAP concentration level or reading at outlet of device	Maximum HAP concentration or reading.

[a] 25 to 50 mm (absolute) is a common pressure level obtained by pressure swing absorbers.
[b] Concentration is measured instead of an operating parameter.

TABLE 8 TO SUBPART U OF PART 63—SUMMARY OF COMPLIANCE ALTERNATIVE REQUIREMENTS FOR THE BACK-END PROCESS PROVISIONS

Compliance alternative	Parameter to be monitored	Requirements
Compliance Using Stripping Technology, Demonstrated through Periodic Sampling [§ 63.495(b)].	Residual organic HAP content in each sample of crumb or latex.	(1) If a stripper operated in batch mode is used, at least one representative sample is to be taken from every batch. (2) If a stripper operated in continuous mode is used, at least one representative sample is to be taken each operating day.
	Quantity of Material (weight of latex or dry crumb rubber) represented by each sample.	(1) Acceptable methods of determining this quantity are production records, measurement of stream characteristics, and engineering calculations.
Compliance Using Stripping Technology, Demonstrated through Stripper Parameter Monitoring [§ 63.495(c)].	At a minimum, temperature, pressure, steaming rates (for steam strippers), and some parameter that is indicative of residence time.	(1) Establish stripper operating parameter levels for each grade in accordance with § 63.505(e). (2) Continuously monitor stripper operating parameters. (3) If hourly average parameters are outside of the established operating parameter levels, a crumb or latex sample shall be taken in accordance with § 63.495(c)(3)(ii).
Determining Compliance Using Control or Recovery Devices [§ 63.496].	Parameters to be monitored are described in Table 3 of subpart G of this part.	Comply with requirements listed in Table 3 of subpart G of this part, except for the requirements for halogenated vent stream scrubbers.

TABLE 9 TO SUBPART U OF PART 63—ROUTINE REPORTS REQUIRED BY THIS SUBPART

Reference	Description of report	Due date
§ 63.506(b) and Subpart A	Refer to § 63.506(b), Table 1 of this subpart, and to subpart A.	Refer to subpart A.
§ 63.506(e)(3)	Precompliance Report[a]	Existing affected sources: 12 months prior to compliance date.
	New affected sources: with the application for approval of construction or reconstruction.	
§ 63.506(e)(4)	Emissions Averaging Plan	18 months prior to the compliance date.
§ 63.506(e)(4)(iv)	Updates to Emissions Averaging Plan.	120 days prior to making the change necessitating the update.
§ 63.506(e)(5)	Notification of Compliance Status[b]	Within 150 days after the compliance date.
§ 63.506(e)(6)	Periodic Reports	Semiannually, no later than 60 days after the end of each 6-month period. See § 63.506(e)(6)(i) for the due date for this report.
§ 63.506(e)(6)(xi)	Quarterly reports for Emissions Averaging.	No later than 60 days after the end of each quarter. First report is due with the Notification of Compliance Status.

TABLE 9 TO SUBPART U OF PART 63—ROUTINE REPORTS REQUIRED BY THIS SUBPART—Continued

Reference	Description of report	Due date
§ 63.506(e)(6)(xii)	Quarterly reports upon request of the Administrator.	No later than 60 days after the end of each quarter.
§ 63.506(e)(7)(i)	Storage Vessels Notification of Inspection.	At least 30 days prior to the refilling of each storage vessel or the inspection of each storage vessel.
§ 63.506(e)(7)(ii)	Requests for Approval of a Nominal Control Efficiency for Use in Emissions Averaging.	Initial submittal is due with the Emissions Averaging Plan; later submittals are made at the discretion of the owner or operator as specified in § 63.506(e)(7)(ii)(B).
§ 63.506(e)(7)(iii)	Notification of Change in the Primary Product.	For notification under § 63.480(f)(3)(ii) —notification submittal date at the discretion of the owner or operator.[c] For notification under § 63.480(f)(4)(ii) —within 6 months of making the determination.

[a] There may be two versions of this report due at different times; one for equipment subject to § 63.502 and one for other emission points subject to this subpart.
[b] There will be two versions of this report due at different times; one for equipment subject to § 63.502 and one for other emission points subject to this subpart.
[c] Note that the EPPU remains subject to this subpart until the notification under § 63.480(f)(3)(i) is made.

Subpart JJJ—National Emission Standards for Hazardous Air Pollutant Emissions: Group IV Polymers and Resins

29. Section 63.1310 is amended by:
a. Revising paragraph (a);
b. Revising paragraph (b);
c. Revising paragraph (c);
d. Revising paragraph (e);
e. Revising paragraph (f);
f. Revising paragraph (g) introductory text;
g. Revising paragraphs (g)(1) through (g)(4);
h. Revising paragraphs (g)(6) through (g)(8);
i. Revising paragraph (h);
j. Revising paragraph (i) introductory text;
k. Revising paragraph (i)(1) introductory text;
l. Revising paragraphs (i)(1)(i) and (i)(1)(ii);
m. Revising paragraph (i)(2)(i) introductory text;
n. Revising paragraph (i)(2)(i)(A);
o. Revising paragraphs (i)(2)(ii) and (i)(2)(iii);
p. Revising paragraphs (i)(3) through (i)(5);
q. Revising paragraph (j);
r. Adding paragraph (i)(2)(iv); and
s. Adding paragraph (i)(6).

The revisions and additions read as follows:

§ 63.1310 Applicability and designation of affected sources.

(a) *Definition of affected source.* The provisions of this subpart apply to each affected source. Affected sources are described in paragraphs (a)(1) through (a)(4) of this section.

(1) An affected source is either an existing affected source or a new affected source. Existing affected source is defined in paragraph (a)(2) of this section, and new affected source is defined in paragraph (a)(3) of this section.

(2) An existing affected source is defined as each group of one or more thermoplastic product process units (TPPU) and associated equipment, as listed in paragraph (a)(4) of this section that is not part of a new affected source, as defined in paragraph (a)(3) of this section, that is manufacturing the same primary product, and that is located at a plant site that is a major source.

(3) A new affected source is defined by the criteria in paragraph (a)(3)(i), (a)(3)(ii), or (a)(3)(iii) of this section. The situation described in paragraph (a)(3)(i) of this section is distinct from those situations described in paragraphs (a)(3)(ii) and (a)(3)(iii) of this section and from any situation described in paragraph (i) of this section.

(i) At a site without HAP emission points before March 29, 1995 (*i.e.,* a ''greenfield'' site), each group of one or more TPPU and associated equipment, as listed in paragraph (a)(4) of this section, that is manufacturing the same primary product and that is part of a major source on which construction commenced after March 29, 1995;

(ii) A group of one or more TPPU meeting the criteria in paragraph (i)(1)(i) of this section; or

(iii) A reconstructed affected source meeting the criteria in paragraph (i)(2)(i) of this section.

(4) *Emission points and equipment.* The affected source also includes the emission points and equipment specified in paragraphs (a)(4)(i) through (a)(4)(vi) of this section that are associated with each applicable group of one or more TPPU constituting an affected source.

(i) Each waste management unit.
(ii) Maintenance wastewater.
(iii) Each heat exchange system.

(iv) Each process contact cooling tower used in the manufacture of PET that is associated with a new affected source.

(v) Each process contact cooling tower used in the manufacture of PET using a continuous terephthalic acid high viscosity multiple end finisher process that is associated with an existing affected source.

(vi) Equipment required by, or utilized as a method of compliance with, this subpart which may include control devices and recovery devices.

(5) TPPUs and associated equipment, as listed in paragraph (a)(4) of this section, that are located at plant sites that are not major sources are neither affected sources nor part of an affected source.

(b) *TPPUs without organic HAP.* The owner or operator of a TPPU that is part of an affected source, as defined in paragraph (a) of this section, but that does not use or manufacture any organic HAP shall comply with the requirements of either paragraph (b)(1) or (b)(2) of this section. Such a TPPU is not subject to any other provisions of this subpart and is not required to comply with the provisions of subpart A of this part.

(1) Retain information, data, and analyses used to document the basis for the determination that the TPPU does not use or manufacture any organic HAP. Types of information that could document this determination include, but are not limited to, records of chemicals purchased for the process, analyses of process stream composition, engineering calculations, or process knowledge.

(2) When requested by the Administrator, demonstrate that the TPPU does not use or manufacture any organic HAP.

(c) *Emission points not subject to the provisions of this subpart.* The affected source includes the emission points listed in paragraphs (c)(1) through (c)(9) of this section, but these emission points are not subject to the requirements of this subpart or to the provisions of subpart A of this part.

(1) Equipment that does not contain organic HAP and is located within a TPPU that is part of an affected source;

(2) Stormwater from segregated sewers;

(3) Water from fire-fighting and deluge systems in segregated sewers;

(4) Spills;

(5) Water from safety showers;

(6) Water from testing of deluge systems;

(7) Water from testing of firefighting systems;

(8) Vessels and equipment storing and/or handling material that contain no organic HAP and/or organic HAP as impurities only; and

(9) Equipment that is intended to operate in organic HAP service for less than 300 hours during the calendar year.

* * * * *

(e) *Applicability determination of nonthermoplastic equipment included within the boundaries of a TPPU.* If a polymer that is not a thermoplastic product is produced within the equipment (*i.e.,* collocated) making up a TPPU and at least 50 percent of that polymer is used in the production of a thermoplastic product manufactured by the same TPPU, then the unit operations involved in the production of that polymer are considered part of the TPPU and are subject to this subpart, with the following exception. Any emission points from such unit operations that are subject to another subpart of this part with an effective date prior to September 5, 1996 shall remain subject to that other subpart of this part and are not subject to this subpart.

(f) *Primary product determination and applicability.* An owner or operator of a process unit that produces or plans to produce a thermoplastic product shall determine if the process unit is subject to this subpart in accordance with this paragraph. The owner or operator shall initially determine whether a process unit is designated as a TPPU and subject to the provisions of this subpart in accordance with either paragraph (f)(1) or (f)(2) of this section. The owner or operator of a flexible operation unit that was not initially designated as a TPPU, but in which a thermoplastic product is produced, shall conduct an annual re-determination of the applicability of this subpart in accordance with paragraph (f)(3) of this section. Owners or operators that anticipate the production of a thermoplastic product in a process unit that was not initially designated as a TPPU, and in which no thermoplastic products are currently produced, shall determine if the process unit is subject to this subpart in accordance with paragraph (f)(4) of this section. Paragraphs (f)(3) and (f)(5) through (f)(7) of this section discuss compliance only for flexible operation units. Other paragraphs apply to all process units, including flexible operation units, unless otherwise noted. Paragraph (f)(8) of this section contains reporting requirements associated with the applicability determinations. Paragraphs (f)(9) and (f)(10) of this section describe criteria for removing the TPPU designation from a process unit.

(1) *Initial determination.* The owner or operator shall initially determine if a process unit is subject to the provisions of this subpart based on the primary product of the process unit in accordance with paragraphs (f)(1)(i) through (iii) of this section. If the process unit never uses or manufactures any organic HAP, regardless of the outcome of the primary product determination, the only requirements of this subpart that might apply to the process unit are contained in paragraph (b) of this section. If a flexible operation unit does not use or manufacture any organic HAP during the manufacture of one or more products, paragraph (f)(5)(i) of this section applies to that flexible operation unit.

(i) If a process unit only manufactures one product, then that product shall represent the primary product of the process unit.

(ii) If a process unit produces more than one intended product at the same time, the primary product shall be determined in accordance with paragraph (f)(1)(ii)(A) or (B) of this section.

(A) The product for which the process unit has the greatest annual design capacity on a mass basis shall represent the primary product of the process unit, or

(B) If a process unit has the same maximum annual design capacity on a mass basis for two or more products, and if one of those products is a thermoplastic product, then the thermoplastic product shall represent the primary product of the process unit.

(iii) If a process unit is designed and operated as a flexible operation unit, the primary product shall be determined as specified in paragraphs (f)(1)(iii)(A) or (B) of this section based on the anticipated operations for the 5 years following September 12, 1996 at existing process units, or for the first year after the process unit begins production of any product for new process units. If operations cannot be anticipated sufficiently to allow the determination of the primary product for the specified period, applicability shall be determined (in accordance with paragraph (f)(2) of this section.

(A) If the flexible operation unit will manufacture one product for the greatest operating time over the specified 5 year period for existing process units, or the specified 1 year period for new process units, then that product shall represent the primary product of the flexible operation unit.

(B) If the flexible operation unit will manufacture multiple products equally based on operating time, then the product with the greatest expected production on a mass basis over the specified 5 year period for existing process units, or the specified 1 year period for new process units shall represent the primary product of the flexible operation unit.

(iv) If, according to paragraph (f)(1)(i), (ii), or (iii) of this section, the primary product of a process unit is a thermoplastic product, then that process unit shall be designated as a TPPU. That TPPU and associated equipment, as listed in paragraph (a)(4) of this section is either an affected source or part of an affected source comprised of other TPPU and associated equipment, as listed in paragraph (a)(4) of this section, subject to this subpart with the same primary product at the same plant site that is a major source. If the primary product of a process unit is determined to be a product that is not a thermoplastic product, then that process unit is not a TPPU.

(2) If the primary product cannot be determined for a flexible operation unit in accordance with paragraph (f)(1)(iii) of this section, applicability shall be determined in accordance with this paragraph.

(i) If the owner or operator cannot determine the primary product in accordance with paragraph (f)(1)(iii) of this section, but can determine that a thermoplastic product is not the primary product, then that flexible operation unit is not a TPPU.

(ii) If the owner or operator cannot determine the primary product in accordance with paragraph (f)(1)(iii) of this section, and cannot determine that a thermoplastic product is not the primary product as specified in paragraph (f)(2)(i) of this section, applicability shall be determined in accordance with paragraph (f)(2)(ii)(A) or (f)(2)(ii)(B) of this section.

(A) If the flexible operation unit is an existing process unit, the flexible operation unit shall be designated as a TPPU if a thermoplastic product was produced for 5 percent or greater of the total operating time of the flexible operating unit since March 9, 1999. That TPPU and associated equipment, as listed in paragraph (a)(4) of this section, is either an affected source, or part of an affected source comprised of other TPPU and associated equipment, as listed in paragraph (a)(4) of this section, subject to this subpart with the same primary product at the same plant site that is a major source. For a flexible operation unit that is designated as an TPPU in accordance with this paragraph, the thermoplastic product produced for the greatest amount of time since March 9, 1999 shall be designated as the primary product of the TPPU.

(B) If the flexible operation unit is a new process unit, the flexible operation unit shall be designated as a TPPU if the owner or operator anticipates that a thermoplastic product will be manufactured in the flexible operation unit at any time in the first year after the date the unit begins production of any product. That TPPU and associated equipment, as listed in paragraph (a)(4) of this section, is either an affected source, or part of an affected source comprised of other TPPU and associated equipment, as listed in paragraph (a)(4) of this section, subject to this subpart with the same primary product at the same plant site that is a major source. For a process unit that is designated as a TPPU in accordance with this paragraph, the thermoplastic product that will be produced shall be designated as the primary product of the TPPU. If more than one thermoplastic product will be produced, the owner or operator may select which thermoplastic product is designated as the primary product.

(3) *Annual applicability determination for non-TPPUs that have produced a thermoplastic product.* Once per year beginning September 12, 2001, the owner or operator of each flexible operation unit that is not designated as a TPPU, but that has produced a thermoplastic product at any time in the preceding 5-year period or since the date that the unit began production of any product, whichever is shorter, shall perform the evaluation described in paragraphs (f)(3)(i) through (f)(3)(iii) of this section. However, an owner or operator that does not intend to produce any thermoplastic product in the future, in accordance with paragraph (f)(9) of this section, is not required to perform the evaluation described in paragraphs (f)(3)(i) through (f)(3)(iii) of this section.

(i) For each product produced in the flexible operation unit, the owner or operator shall calculate the percentage of total operating time over which the product was produced during the preceding 5-year period.

(ii) The owner or operator shall identify the primary product as the product with the highest percentage of total operating time for the preceding 5-year period.

(iii) If the primary product identified in paragraph (f)(3)(ii) is a thermoplastic product, the flexible operation unit shall be designated as a TPPU. The owner or operator shall notify the Administrator no later than 45 days after determining that the flexible operation unit is a TPPU, and shall comply with the requirements of this subpart in accordance with paragraph (i)(1) of this section for the flexible operation unit.

(4) *Applicability determination for non-TPPUs that have not produced a thermoplastic product.* The owner or operator that anticipates the production of a thermoplastic product in a process unit that is not designated as a TPPU, and in which no thermoplastic products have been produced in the previous 5-year period or since the date that the process unit began production of any product, whichever is shorter, shall determine if the process unit is subject to this subpart in accordance with paragraphs (f)(4)(i) and (ii) of this section. Also, owners or operators who have notified the Administrator that a process unit is not a TPPU in accordance with paragraph (f)(9) of this section, that now anticipate the production of a thermoplastic product in the process unit, shall determine if the process unit is subject to this subpart in accordance with paragraphs (f)(4)(i) and (ii) of this section.

(i) The owner or operator shall use the procedures in paragraph (f)(1) or (f)(2) of this section to determine if the process unit is designated as a TPPU, with the following exception: For existing process units that are determining the primary product in accordance with paragraph (f)(1)(iii) of this section, production shall be projected for the five years following the date that the owner or operator anticipates initiating the production of a thermoplastic product.

(ii) If the unit is designated as a TPPU in accordance with paragraph (f)(4)(i) of this section, the owner or operator shall comply in accordance with paragraph (i)(1) of this section.

(5) *Compliance for flexible operation units.* Owners or operators of TPPUs that are flexible operation units shall comply with the standards specified for the primary product, with the exceptions provided in paragraphs (f)(5)(i) and (f)(5)(ii) of this section.

(i) Whenever a flexible operation unit manufactures a product in which no organic HAP is used or manufactured, the owner or operator is only required to comply with either paragraph (b)(1) or (b)(2) of this section to demonstrate compliance for activities associated with the manufacture of that product. This subpart does not require compliance with the provisions of subpart A of this part for activities associated with the manufacture of a product that meets the criteria of paragraph (b) of this section.

(ii) Whenever a flexible operation unit manufactures a product that makes it subject to subpart GGG of this part, the owner or operator is not required to comply with the provisions of this subpart during the production of that product.

(6) Owners or operators of TPPUs that are flexible operation units have the option of determining the group status of each emission point associated with the flexible operation unit, in accordance with either paragraph (f)(6)(i) or (f)(6)(ii) of this section, with the exception of batch process vents. For batch process vents, the owner or operator shall determine the group status in accordance with § 63.1323.

(i) The owner or operator may determine the group status of each emission point based on emission point characteristics when the primary product is being manufactured. The criteria that shall be used for this group determination are the Group 1 criteria specified for the primary product.

(ii) The owner or operator may determine the group status of each emission point separately for each product produced by the flexible operation unit. For each product, the group status shall be determined using the emission point characteristics when that product is being manufactured and using the Group 1 criteria specified for the primary product. (Note: Under this scenario, it is possible that the group status, and therefore the requirement to achieve emission reductions, for an emission point may change depending on the product being manufactured.)

(7) Owners or operators determining the group status of emission points in flexible operation units based solely on the primary product in accordance with paragraph (f)(6)(i) of this section shall establish parameter monitoring levels, as required, in accordance with either paragraph (f)(7)(i) or (f)(7)(ii) of this section. Owners or operators determining the group status of

emission points in flexible operation units based on each product in accordance with paragraph (f)(6)(ii) of this section shall establish parameter monitoring levels, as required, in accordance with paragraph (f)(7)(i) of this section.

(i) Establish separate parameter monitoring levels in accordance with § 63.1334(a) for each individual product.

(ii) Establish a single parameter monitoring level (for each parameter required to be monitored at each device subject to monitoring requirements) in accordance with § 63.1334(a) that would apply for all products.

(8) *Reporting requirements.* When it is determined that a process unit is a TPPU and subject to the requirements of this subpart, the Notification of Compliance Status required by § 63.1335(e)(5) shall include the information specified in paragraphs (f)(8)(i) and (f)(8)(ii) of this section, as applicable. If it is determined that the process unit is not subject to this subpart, the owner or operator shall either retain all information, data, and analysis used to document the basis for the determination that the primary product is not a thermoplastic product, or, when requested by the Administrator, demonstrate that the process unit is not subject to this subpart.

(i) If the TPPU manufactures only one thermoplastic product, identification of that thermoplastic product.

(ii) If the TPPU is designed and operated as a flexible operation unit, the information specified in paragraphs (f)(8)(ii)(A) through (f)(8)(ii)(D) of this section, as appropriate, shall be submitted.

(A) If a primary product could be determined, identification of the primary product.

(B) Identification of which compliance option, either paragraph (f)(6)(i) or (f)(6)(ii) of this section, has been selected by the owner or operator.

(C) If the option to establish separate parameter monitoring levels for each product in paragraph (f)(7)(i) of this section is selected, the identification of each product and the corresponding parameter monitoring level.

(D) If the option to establish a single parameter monitor level in paragraph (f)(7)(ii) of this section is selected, the parameter monitoring level for each parameter.

(9) *TPPUs terminating production of all thermoplastic products.* If a TPPU terminates the production of all thermoplastic products and does not anticipate the production of any thermoplastic products in the future, the process unit is no longer a TPPU and is not subject to this subpart after notification is made to the Administrator. This notification shall be accompanied by a rationale for why it is anticipated that no thermoplastic products will be produced in the process unit in the future.

(10) *Redetermination of applicability to TPPUs that are flexible operation units.* Whenever changes in production occur that could reasonably be expected to change the primary product of a TPPU that is operating as a flexible operation unit from a thermoplastic product to a product that would make the process unit subject to another subpart of this part, the owner or operator shall re-evaluate the status of the process unit as a TPPU in accordance with paragraphs (f)(10)(i) through (iii) of this section.

(i) For each product produced in the flexible operation unit, the owner or operator shall calculate the percentage of total operating time in which the product was produced for the preceding five-year period, or since the date that the process unit began production of any product, whichever is shorter.

(ii) The owner or operator shall identify the primary product as the product with the highest percentage of total operating time for the period.

(iii) If the conditions in (f)(10)(iii)(A) through (C) of this section are met, the flexible operation unit shall no longer be designated as a TPPU and shall no longer be subject to the provisions of this subpart after the date that the process unit is required to be in compliance with the provisions of the other subpart of this part to which it is subject. If the conditions in paragraphs (f)(10)(iii)(A) through (C) of this section are not met, the flexible operation unit shall continue to be considered a TPPU and subject to the requirements of this subpart.

(A) The product identified in (f)(10)(ii) of this section is not a thermoplastic product; and

(B) The production of the product identified in (f)(10)(ii) of this section is subject to another subpart of this part; and

(C) The owner or operator submits a notification to the Administrator of the pending change in applicability.

(g) *Storage vessel ownership determination.* The owner or operator shall follow the procedures specified in paragraphs (g)(1) through (g)(7) of this section to determine to which process unit a storage vessel shall be assigned. Paragraph (g)(8) of this section specifies when an owner or operator is required to redetermine to which process unit a storage vessel is assigned.

(1) If a storage vessel is already subject to another subpart of 40 CFR part 63 on September 12, 1996, said storage vessel shall be assigned to the process unit subject to the other subpart.

(2) If a storage vessel is dedicated to a single process unit, the storage vessel shall be assigned to that process unit.

(3) If a storage vessel is shared among process units, then the storage vessel shall be assigned to that process unit located on the same plant site as the storage vessel that has the greatest input into or output from the storage vessel (*i.e.,* said process unit has the predominant use of the storage vessel).

(4) If predominant use cannot be determined for a storage vessel that is shared among process units and if only one of those process units is a TPPU subject to this subpart, the storage vessel shall be assigned to said TPPU.

* * * * *

(6) If the predominant use of a storage vessel varies from year to year, then predominant use shall be determined based on the utilization that occurred during the year preceding September 12, 1996 or based on the expected utilization for the 5 years following September 12, 1996 for existing affected sources, whichever is more representative of the expected operations for said storage vessel, and based on the expected utilization for the first 5 years after initial start-up for new affected sources. The determination of predominant use shall be reported in the Notification of Compliance Status, as required by § 63.1335(e)(5)(vi).

(7) Where a storage vessel is located at a major source that includes one or more process units which place material into, or receive materials from the storage vessel, but the storage vessel is located in a tank farm (including a marine tank farm), the applicability of this subpart shall be determined according to the provisions in paragraphs (g)(7)(i) through (g)(7)(iv) of this section.

(i) The storage vessel may only be assigned to a process unit that utilizes the storage vessel and does not have an intervening storage vessel for that product (or raw material, as appropriate). With respect to any process unit, an intervening storage vessel means a storage vessel connected by hard-piping both to the process unit and to the storage vessel in the tank farm so that product or raw material entering or leaving the process unit flows into (or from) the intervening storage vessel and does not flow directly into (or from) the storage vessel in the tank farm.

(ii) If there is no process unit at the major source that meets the criteria of

paragraph (g)(7)(i) of this section with respect to a storage vessel, this subpart does not apply to the storage vessel.

(iii) If there is only one process unit at the major source that meets the criteria of paragraph (g)(7)(i) of this section with respect to a storage vessel, the storage vessel shall be assigned to that process unit.

(iv) If there are two or more process units at the major source that meet the criteria of paragraph (g)(7)(i) of this section with respect to a storage vessel, the storage vessel shall be assigned to one of those process units according to the provisions of paragraphs (g)(3) through (g)(6) of this section. The predominant use shall be determined among only those process units that meet the criteria of paragraph (g)(7)(i) of this section.

(8) If the storage vessel begins receiving material from (or sending material to) a process unit that was not included in the initial determination, or ceases to receive material from (or send material to) a process unit, the owner or operator shall re-evaluate the applicability of this subpart to the storage vessel.

(h) *Recovery operations equipment ownership determination.* The owner or operator shall follow the procedures specified in paragraphs (h)(1) through (h)(6) of this section to determine to which process unit recovery operations equipment shall be assigned. Paragraph (h)(7) of this section specifies when an owner or operator is required to redetermine to which process unit the recovery operations equipment is assigned.

(1) If recovery operations equipment is already subject to another subpart of 40 CFR part 63 on September 12, 1996, said recovery operations equipment shall be assigned to the process unit subject to the other subpart.

(2) If recovery operations equipment is dedicated to a single process unit, the recovery operations equipment shall be assigned to that process unit.

(3) If recovery operations equipment is shared among process units, then the recovery operations equipment shall be assigned to that process unit located on the same plant site as the recovery operations equipment that has the greatest input into or output from the recovery operations equipment (*i.e.,* said process unit has the predominant use of the recovery operations equipment).

(4) If predominant use cannot be determined for recovery operations equipment that is shared among process units and if one of those process units is a TPPU subject to this subpart, the recovery operations equipment shall be assigned to said TPPU.

(5) If predominant use cannot be determined for recovery operations equipment that is shared among process units and if more than one of the process units are TPPUs that have different primary products and that are subject to this subpart, then the owner or operator shall assign the recovery operations equipment to any one of said TPPUs.

(6) If the predominant use of recovery operations equipment varies from year to year, then predominant use shall be determined based on the utilization that occurred during the year preceding September 12, 1996 or based on the expected utilization for the 5 years following September 12, 1996 for existing affected sources, whichever is the more representative of the expected operations for said recovery operations equipment, and based on the first 5 years after initial start-up for new affected sources. The determination of predominant use shall be reported in the Notification of Compliance Status, as required by § 63.1335(e)(5)(vii).

(7) If a piece of recovery operations equipment begins receiving material from a process unit that was not included in the initial determination, or ceases to receive material from a process unit that was included in the initial determination, the owner or operator shall reevaluate the applicability of this subpart to that recovery operations equipment.

(i) *Changes or additions to plant sites.* The provisions of paragraphs (i)(1) through (i)(4) of this section apply to owners or operators that change or add to their plant site or affected source. Paragraph (i)(5) of this section provides examples of what are and are not considered process changes for purposes of this paragraph (i) of this section. Paragraph (i)(6) of this section discusses reporting requirements.

(1) *Adding a TPPU to a plant site.* The provisions of paragraphs (i)(1)(i) and (i)(1)(ii) of this section apply to owners or operators that add one or more TPPUs to a plant site.

(i) If a group of one or more TPPUs that produce the same primary product is added to a plant site, the added group of one or more TPPUs and associated equipment, as listed in paragraph (a)(4) of this section, shall be a new affected source and shall comply with the requirements for a new affected source in this subpart upon initial start-up or by June 19, 2000, whichever is later, as provided in § 63.6(b), except that new affected sources whose primary product, as determined using the procedures specified in paragraph (f) of this section, is poly(ethylene terephthalate) (PET) shall be in compliance with § 63.1331 upon initial start-up or February 27, 2001, whichever is later, if the added group of one or more TPPUs meets the criteria in either paragraph (i)(1)(i)(A) or (i)(1)(i)(B) of this section, and the criteria in either paragraph (i)(1)(i)(C) or (i)(1)(i)(D) of this section are met.

(A) The construction of the group of one or more TPPUs commenced after March 29, 1995.

(B) The construction or reconstruction, for process units that have become TPPUs, commenced after March 29, 1995.

(C) The group of one or more TPPUs and associated equipment, as listed in paragraph (a)(4) of this section, has the potential to emit 10 tons per year or more of any HAP or 25 tons per year or more of any combination of HAP, and the primary product of the group of one or more TPPUs is currently produced at the plant site as the primary product of an affected source; or

(D) The primary product of the group of one or more TPPUs is not currently produced at the plant site as the primary product of an affected source and the plant site meets, or after the addition of the group of one or more TPPUs and associated equipment, as listed in paragraph (a)(4) of this section, will meet the definition of a major source.

(ii) If a group of one or more TPPUs that produce the same primary product is added to a plant site, and the group of one or more TPPUs does not meet the criteria specified in paragraph (i)(1)(i) of this section, and the plant site meets, or after the addition will meet, the definition of a major source, the group of one or more TPPUs and associated equipment, as listed in paragraph (a)(4) of this section, shall comply with the requirements for an existing affected source in this subpart upon initial start-up; by June 19, 2001; or by 6 months after notifying the Administrator that a process unit has been designated as a TPPU (in accordance with paragraph (f)(3)(iii) of this section), whichever is later.

(2) * * *

(i) If any components are replaced at an existing affected source such that the criteria specified in paragraphs (i)(2)(i)(A) through (i)(2)(i)(B) of this section are met, the entire affected source shall be a new affected source and shall comply with the requirements for a new affected source upon initial start-up or by June 19, 2000, whichever is later, as provided in § 63.6(b), except that new affected sources whose primary product is poly(ethylene terephthalate) (PET) shall be in compliance with § 63.1331 upon initial

start-up or by February 27, 2001, whichever is later.

(A) The replacement of components meets the definition of reconstruction in § 63.1312(b); and

* * * * *

(ii) If any components are replaced at an existing affected source such that the criteria specified in paragraphs (i)(2)(i)(A) through (i)(2)(i)(B) of this section are not met, and that replacement of components creates one or more Group 1 emission points (*i.e.,* either newly created Group 1 emission points or emission points that change group status from Group 2 to Group 1) or causes any other emission point to be added (*i.e.,* Group 2 emission points, equipment leak components subject to § 63.1331, continuous process vents subject to §§ 63.1316 through 63.1320, heat exchange systems subject to § 63.1328, and process contact cooling towers subject to § 63.1329), the resulting emission point(s) shall be subject to the applicable requirements for an existing affected source. The resulting emission points shall be in compliance by 120 days after the date of initial start-up or by the appropriate compliance date specified in § 63.1311 (*i.e.,* February 27, 1998 for most equipment leak components subject to § 63.1331, June 19, 2001 for most emission points other than equipment leaks, and February 27, 2001 for process contact cooling towers at sources that produce PET as the primary product), whichever is later.

(iii) If an addition or process change (not including a process change that solely replaces components) is made to an existing affected source that creates one or more Group 1 emission points (*i.e.,* either newly created Group 1 emission points or emission points that change group status from Group 2 to Group 1) or causes any other emission point to be added (*i.e.,* Group 2 emission points, equipment leak components subject to § 63.1331, continuous process vents subject to §§ 63.1316 through 63.1320, heat exchange systems subject to § 63.1328, and process contact cooling towers subject to § 63.1329), the resulting emission point(s) shall be subject to the applicable requirements for an existing affected source. The resulting emission point(s) shall be in compliance by 120 days after the date of initial start-up or by the appropriate compliance date specified in § 63.1311 (*i.e.,* February 27, 1998 for most equipment leak components subject to § 63.1331, June 19, 2001 for most emission points other than equipment leaks, and February 27, 2001 for process contact cooling towers at sources that produce PET as their primary product), whichever is later.

(iv) If any process change (not including a process change that solely replaces components) is made to an existing affected source that results in baseline emissions (*i.e.,* emissions prior to applying controls for purposes of complying with this subpart) from continuous process vents in the collection of material recovery sections within the affected source at an existing affected source producing PET using a continuous dimethyl terephthalate process changing from less than or equal to 0.12 kg organic HAP per Mg of product to greater than 0.12 kg organic HAP per Mg of product, the continuous process vents shall be subject to the applicable requirements for an existing affected source. The resulting emission point(s) shall be in compliance by 120 days after the date of initial start-up or by June 19, 2001, whichever is later.

(3) *Existing affected source requirements for surge control vessels and bottoms receivers that become subject to subpart H requirements.* If a process change or addition of an emission point causes a surge control vessel or bottoms receiver to become subject to § 63.170 under this paragraph (i), the owner or operator shall be in compliance upon initial start-up or by June 19, 2001, whichever is later.

(4) *Existing affected source requirements for compressors that become subject to the requirements of subpart H of this part.* If a process change or the addition of an emission point causes a compressor to become subject to § 63.164 under this paragraph (i), the owner or operator shall be in compliance upon initial start-up or by the compliance date for that compressor as specified in § 63.1311(d)(1) through (d)(4), whichever is later.

(5) *Determining what are and are not process changes.* For purposes of paragraph (i) of this section, examples of process changes include, but are not limited to, changes in feedstock type, or process catalyst type, or the replacement, removal, or addition of recovery equipment, or equipment changes that increase production capacity. For purposes of paragraph (i) of this section, process changes do not include: Process upsets, unintentional temporary process changes, and changes that do not alter the equipment configuration and operating conditions.

(6) *Reporting requirements for owners or operators that change or add to their plant site or affected source.* Owners or operators that change or add to their plant site or affected source, as discussed in paragraphs (i)(1) and (i)(2) of this section, shall submit a report as specified in § 63.1335(e)(7)(iv).

(j) *Applicability of this subpart during periods of start-up, shutdown, malfunction, or non-operation.* Paragraphs (j)(1) through (j)(4) of this section shall be followed during periods of start-up, shutdown, malfunction, or non-operation of the affected source or any part thereof.

(1) The emission limitations set forth in this subpart and the emission limitations referred to in this subpart shall apply at all times except during periods of non-operation of the affected source (or specific portion thereof) resulting in cessation of the emissions to which this subpart applies. The emission limitations of this subpart and the emission limitations referred to in this subpart shall not apply during periods of start-up, shutdown, or malfunction, except as provided in paragraphs (j)(3) and (j)(4) of this section. During periods of start-up, shutdown, or malfunction, the owner or operator shall follow the applicable provisions of the start-up, shutdown, and malfunction plan required by § 63.1335(b)(1). However, if a start-up, shutdown, malfunction, or period of non-operation of one portion of an affected source does not affect the ability of a particular emission point to comply with the emission limitations to which it is subject, then that emission point shall still be required to comply with the applicable emission limitations of this subpart during the start-up, shutdown, malfunction, or period of non-operation. For example, if there is an overpressure in the reactor area, a storage vessel that is part of the affected source would still be required to be controlled in accordance with the emission limitations in § 63.1314.

Similarly, the degassing of a storage vessel would not affect the ability of a batch process vent to meet the emission limitations of §§ 63.1321 through 63.1327.

(2) The emission limitations set forth in subpart H of this part, as referred to in § 63.1331, shall apply at all times except during periods of non-operation of the affected source (or specific portion thereof) in which the lines are drained and depressurized resulting in cessation of the emissions to which § 63.1331 applies, or during periods of start-up, shutdown, malfunction, or process unit shutdown (as defined in § 63.161).

(3) The owner or operator shall not shut down items of equipment that are required or utilized for compliance with this subpart during periods of start-up, shutdown, or malfunction during times when emissions (or, where applicable,

wastewater streams or residuals) are being routed to such items of equipment, if the shutdown would contravene requirements of this subpart applicable to such items of equipment. This paragraph (j)(3) does not apply if the item of equipment is malfunctioning. This paragraph also does not apply if the owner or operator shuts down the compliance equipment (other than monitoring systems) to avoid damage due to a contemporaneous start-up, shutdown, or malfunction of the affected source or portion thereof. If the owner or operator has reason to believe that monitoring equipment would be damaged due to a contemporaneous start-up, shutdown, or malfunction of the affected source or portion thereof, the owner or operator shall provide documentation supporting such a claim in the Precompliance Report or in a supplement to the Precompliance Report, as provided in § 63.1335(e)(3). Once approved by the Administrator in accordance with § 63.1335(e)(3)(viii), the provision for ceasing to collect, during a start-up, shutdown, or malfunction, monitoring data that would otherwise be required by the provisions of this subpart must be incorporated into the start-up, shutdown, malfunction plan for that affected source, as stated in § 63.1335(b)(1).

(4) During start-ups, shutdowns, and malfunctions when the emission limitations of this subpart do not apply pursuant to paragraphs (j)(1) through (j)(3) of this section, the owner or operator shall implement, to the extent reasonably available, measures to prevent or minimize excess emissions to the extent practical. For purposes of this paragraph, the term ''excess emissions'' means emissions greater than those allowed by the emissions limitation which would apply during operational periods other than start-up, shutdown, and malfunction. The measures to be taken shall be identified in the applicable start-up, shutdown, and malfunction plan, and may include, but are not limited to, air pollution control technologies, recovery technologies, work practices, pollution prevention, monitoring, and/or changes in the manner of operation of the affected source. Back-up control devices are not required, but may be used if available.

30. Section 63.1311 is amended by:

a. Revising the section title;

b. Revising paragraph (a);

c. Revising paragraph (b);

d. Revising paragraph (c);

e. Revising paragraph (d) introductory text;

f. Revising paragraph (d)(1) introductory text;

g. Revising paragraphs (d)(2) and (d)(3);

h. Revising paragraphs (d)(5) and (d)(6);

i. Revising paragraph (e) introductory text;

j. Revising paragraph (h);

k. Revising paragraph (i)(1);

l. Revising paragraph (j);

m. Revising paragraph (l);

n. Revising paragraph (m);

o. Adding paragraph (e)(3);

p. Adding paragraph (i)(3);

q. Adding paragraph (n); and

r. Adding paragraph (o).

The revisions and additions read as follows:

§ 63.1311 Compliance dates and relationship of this subpart to existing applicable rules.

(a) Affected sources are required to achieve compliance on or before the dates specified in paragraphs (b) through (d) of this section. Paragraph (e) of this section provides information on requesting compliance extensions. Paragraphs (f) through (n) of this section discuss the relationship of this subpart to subpart A of this part and to other applicable rules. Where an override of another authority of the Act is indicated in this subpart, only compliance with the provisions of this subpart is required. Paragraph (o) of this section specifies the meaning of time periods.

(b) New affected sources that commence construction or reconstruction after March 29, 1995 shall be in compliance with this subpart upon initial start-up or by June 19, 2000, whichever is later, except that new affected sources whose primary product, as determined using the procedures specified in § 63.1310(f), is poly(ethylene terephthalate) (PET) shall be in compliance with § 63.1331 upon initial start-up or February 27, 2001, whichever is later.

(c) Existing affected sources shall be in compliance with this subpart (except for § 63.1331 for which compliance is covered by paragraph (d) of this section) no later than June 19, 2001, as provided in § 63.6(c), unless an extension has been granted as specified in paragraph (e) of this section, except that the compliance date for the provisions contained in § 63.1329 is temporarily extended to February 27, 2001, for existing affected sources whose primary product, as determined using the procedures specified in 63.1310(f), is PET using a continuous terephthalic acid high viscosity multiple end finisher process.

(d) Except as provided for in paragraphs (d)(1) through (d)(6) of this section, existing affected sources shall be in compliance with § 63.1331 no later than June 19, 2001, unless an extension has been granted pursuant to paragraph (e) of this section.

(1) Compliance with the compressor provisions of § 63.164 shall occur no later than February 27, 1998, for any compressor meeting one or more of the criteria in paragraphs (d)(1)(i) through (d)(1)(iv) of this section, if the work can be accomplished without a process unit shutdown:

* * * * *

(2) Compliance with the compressor provisions of § 63.164 shall occur no later than March 12, 1998 for any compressor meeting all the criteria in paragraphs (d)(2)(i) through (d)(2)(iv) of this section:

(i) The compressor meets one or more of the criteria specified in paragraphs (d)(1)(i) through (d)(1)(iv) of this section;

(ii) The work can be accomplished without a process unit shutdown ;

(iii) The additional time is actually necessary due to the unavailability of parts beyond the control of the owner or operator; and

(iv) The owner or operator submits the request for a compliance extension to the appropriate Environmental Protection Agency (EPA) Regional Office at the address listed in § 63.13 no later than June 16, 1997. The request for a compliance extension shall contain the information specified in § 63.6(i)(6)(i)(A), (B), and (D). Unless the EPA Regional Office objects to the request for a compliance extension within 30 days after receipt of the request, the request shall be deemed approved.

(3) If compliance with the compressor provisions of § 63.164 cannot reasonably be achieved without a process unit shutdown, the owner or operator shall achieve compliance no later than September 12, 1998. The owner or operator who elects to use this provision shall submit a request for a compliance extension in accordance with the requirements of paragraph (d)(2)(iv) of this section.

* * * * *

(5) Compliance with the provisions of § 63.170 shall occur no later than June 19, 2001.

(6) Notwithstanding paragraphs (d)(1) through (d)(4) of this section, existing affected sources whose primary product, as determined using the procedures specified in § 63.1310(f), is PET shall be in compliance with § 63.1331 no later than February 27, 2001.

(e) Pursuant to Section 112(i)(3)(B) of the Act, an owner or operator may request an extension allowing the

existing affected source up to 1 additional year to comply with Section 112(d) standards. For purposes of this subpart, a request for an extension shall be submitted to the permitting authority as part of the operating permit application or to the Administrator as a separate submittal or as part of the Precompliance Report. Requests for extensions shall be submitted no later than 120 days prior to the compliance dates specified in paragraphs (b) through (d) of this section, or as specified elsewhere in this subpart, except as provided in paragraph (e)(3) of this section. The dates specified in § 63.6(i) for submittal of requests for extensions shall not apply to this subpart.

* * * * *

(3) An owner or operator may submit a compliance extension request after the date specified in paragraph (e) of this section, provided that the need for the compliance extension arose after that date, and the need arose due to circumstances beyond reasonable control of the owner or operator. This request shall include, in addition to the information specified in paragraph (e)(1) of this section, a statement of the reasons additional time is needed and the date when the owner or operator first learned of the circumstances necessitating a request for compliance extension under this paragraph (e)(3).

* * * * *

(h) After the compliance dates specified in this section, a storage vessel that is assigned to an affected source subject to this subpart and that is also subject to the provisions of 40 CFR part 60, subpart Kb, is required to comply only with the provisions of this subpart. After the compliance dates specified in this section, said storage vessel shall no longer be subject to 40 CFR part 60, subpart Kb.

(i)(1) Except as provided in paragraphs (i)(2) and (i)(3) of this section, after the compliance dates specified in this section, affected sources producing PET using a continuous terephthalic acid process, producing PET using a continuous dimethyl terephthalate process, or producing polystyrene resin using a continuous process subject to this subpart that are also subject to the provisions of 40 CFR part 60, subpart DDD, are required to comply only with the provisions of this subpart. After the compliance dates specified in this section, said sources shall no longer be subject to 40 CFR part 60, subpart DDD.

* * * * *

(3) Existing affected sources producing PET using a continuous terephthalic acid process, but not using a continuous terephthalic acid high viscosity multiple end finisher process, that are subject to and complying with 40 CFR 60.562–1(c)(2)(ii)(B) shall continue to comply with said section. Existing affected sources producing PET using a continuous dimethyl terephthalic process that are subject to and complying with 40 CFR 60.562–1(c)(1)(ii)(B) shall continue to comply with said section.

(j) Owners or operators of affected sources subject to this subpart that are also subject to the provisions of subpart Q of this part shall comply with both subparts.

* * * * *

(l) After the compliance dates specified in this section, a distillation operation that is assigned to an affected source subject to this subpart that is also subject to the provisions of 40 CFR part 60, subpart NNN, is required to comply only with the provisions of this subpart. After the compliance dates specified in this section, the distillation operation shall no longer be subject to 40 CFR part 60, subpart NNN.

(m) *Applicability of other regulations for monitoring, recordkeeping or reporting with respect to combustion devices, recovery devices, or recapture devices.* After the compliance dates specified in this subpart, if any combustion device, recovery device or recapture device subject to this subpart is also subject to monitoring, recordkeeping, and reporting requirements in 40 CFR part 264 subpart AA or CC, or is subject to monitoring and recordkeeping requirements in 40 CFR part 265 subpart AA or CC and the owner or operator complies with the periodic reporting requirements under 40 CFR part 264 subpart AA or CC that would apply to the device if the facility had final-permitted status, the owner or operator may elect to comply either with the monitoring, recordkeeping and reporting requirements of this subpart, or with the monitoring, recordkeeping and reporting requirements in 40 CFR parts 264 and/or 265, as described in this paragraph, which shall constitute compliance with the monitoring, recordkeeping and reporting requirements of this subpart. The owner or operator shall identify which option has been selected in the Notification of Compliance Status required by § 63.1335(e)(5).

(n) *Applicability of other requirements for heat exchange systems or waste management units.* Paragraphs (n)(1) and (n)(2) of this section address instances in which certain requirements from other regulations also apply for the same heat exchange system(s) or waste management unit(s) that are subject to this subpart.

(1) After the applicable compliance date specified in this subpart, if a heat exchange system subject to this subpart is also subject to a standard identified in paragraphs (n)(1)(i) or (ii) of this section, compliance with the applicable provisions of the standard identified in paragraphs (n)(1)(i) or (ii) of this section shall constitute compliance with the applicable provisions of this subpart with respect to that heat exchange system.

(i) Subpart F of this part.

(ii) A subpart of this part which requires compliance with § 63.104 (*e.g.*, subpart U of this part).

(2) After the applicable compliance date specified in this subpart, if any waste management unit subject to this subpart is also subject to a standard identified in paragraph (n)(2)(i) or (ii) of this section, compliance with the applicable provisions of the standard identified in paragraph (n)(2)(i) or (ii) of this section shall constitute compliance with the applicable provisions of this subpart with respect to that waste management unit.

(i) Subpart G of this part.

(ii) A subpart of this part which requires compliance with §§ 63.132 through 63.147.

(o) All terms in this subpart that define a period of time for completion of required tasks (*e.g.*, weekly, monthly, quarterly, annual), unless specified otherwise in the section or paragraph that imposes the requirement, refer to the standard calendar periods.

(1) Notwithstanding time periods specified in this subpart for completion of required tasks, such time periods may be changed by mutual agreement between the owner or operator and the Administrator, as specified in subpart A of this part (*e.g.*, a period could begin on the compliance date or another date, rather than on the first day of the standard calendar period). For each time period that is changed by agreement, the revised period shall remain in effect until it is changed. A new request is not necessary for each recurring period.

(2) Where the period specified for compliance is a standard calendar period, if the initial compliance date occurs after the beginning of the period, compliance shall be required according to the schedule specified in paragraphs (o)(2)(i) or (o)(2)(ii) of this section, as appropriate.

(i) Compliance shall be required before the end of the standard calendar period within which the compliance deadline occurs, if there remain at least 3 days for tasks that must be performed

weekly, at least 2 weeks for tasks that must be performed monthly, at least 1 month for tasks that must be performed each quarter, or at least 3 months for tasks that must be performed annually; or

(ii) In all other cases, compliance shall be required before the end of the first full standard calendar period after the period within which the initial compliance deadline occurs.

(3) In all instances where a provision of this subpart requires completion of a task during each of multiple successive periods, an owner or operator may perform the required task at any time during the specified period, provided that the task is conducted at a reasonable interval after completion of the task during the previous period.

31. Section 63.1312 is amended by:

a. Revising paragraph (a);

b. Amending paragraph (b) by revising the definitions for ''Acrylonitrile butadiene styrene latex resin (ABS latex),'' ''Aggregate batch vent stream,'' ''Batch cycle,'' ''Batch process,'' ''Batch process vent,'' ''Batch unit operation,'' ''Continuous process,'' ''Continuous process vent,'' ''Continuous unit operation,'' ''Control device,'' ''Emission point,'' ''Emulsion process,'' ''Group 1 batch process vent,'' ''Heat exchange system,'' ''Maintenance wastewater,'' ''Mass process,'' ''Material recovery section,'' ''Organic hazardous air pollutant(s) (organic HAP),'' ''Polymerization reaction section,'' ''Process unit,'' ''Process vent,'' ''Product,'' ''Raw materials preparation section,'' ''Recovery operations equipment,'' ''Steady-state conditions,'' ''Storage vessel,'' ''Supplemental combustion air,'' ''Suspension process,'' and ''Thermoplastic product process unit (TPPU),'';

c. Amending paragraph (b) by removing the definitions of ''Average flow rate,'' ''Solid state polymerization unit,'' and ''Year,''; and

d. Amending paragraph (b) by adding definitions for the terms ''Annual average batch vent concentration,'' ''Annual average batch vent flow rate,'' ''Annual average concentration,'' ''Annual average flow rate,'' ''Average batch vent concentration,'' ''Average batch vent flow rate,'' ''Batch mass input limitation,'' ''Batch mode,'' ''Combined vent stream,'' ''Construction,'' ''Continuous mode,'' ''Continuous record,'' ''Continuous recorder,'' ''Equipment,'' ''Existing affected source,'' ''Existing process unit,'' ''Flexible operation unit,'' ''Group 1 wastewater stream'' ''Group 2 wastewater stream,'' ''Highest- HAP recipe,'' ''Initial start-up,'' ''Maximum true vapor pressure,'' ''Multicomponent system,'' ''New affected source,'' ''New process unit,'' ''On-site or On site,'' ''Operating day,'' ''Recipe,'' ''Reconstruction,'' ''Recovery device,'' ''Residual,'' ''Shutdown,'' ''Solid state polymerization process,'' ''Start-up,'' ''Total resource effectiveness index value or TRE index value,'' ''Vent stream,'' ''Waste management unit,'' ''Wastewater,'' and ''Wastewater stream.''

The revisions and additions read as follows:

§ 63.1312 Definitions.

(a) The following terms used in this subpart shall have the meaning given them in § 63.2, § 63.101, § 63.111, § 63.161, or the Act, as specified after each term:

Act (§ 63.2)
Administrator (§ 63.2)
Automated monitoring and recording system (§ 63.111)
Boiler (§ 63.111)
Bottoms receiver (§ 63.161)
By compound (§ 63.111)
By-product (§ 63.101)
Car-seal (§ 63.111)
Closed-vent system (§ 63.111)
Combustion device (§ 63.111)
Commenced (§ 63.2)
Compliance date (§ 63.2)
Connector (§ 63.161)
Continuous monitoring system (§ 63.2)
Distillation unit (§ 63.111)
Duct work (§ 63.161)
Emission limitation (Section 302(k) of the Act)
Emission standard (§ 63.2)
Emissions averaging (§ 63.2)
EPA (§ 63.2)
Equipment leak (§ 63.101)
External floating roof (§ 63.111)
Fill or filling (§ 63.111)
First attempt at repair (§ 63.161)
Fixed capital cost (§ 63.2)
Flame zone (§ 63.111)
Floating roof (§ 63.111)
Flow indicator (§ 63.111)
Fuel gas system (§ 63.101)
Halogens and hydrogen halides (§ 63.111)
Hard-piping (§ 63.111)
Hazardous air pollutant (§ 63.2)
Impurity (§ 63.101)
In organic hazardous air pollutant service or in organic HAP service (§ 63.161)
Incinerator (§ 63.111)
Instrumentation system (§ 63.161)
Internal floating roof (§ 63.111)
Lesser quantity (§ 63.2)
Major source (§ 63.2)
Malfunction (§ 63.2)
Oil-water separator or organic-water separator (§ 63.111)
Open-ended valve or line (§ 63.161)
Operating permit (§ 63.101)
Organic monitoring device (§ 63.111)
Owner or operator (§ 63.2)
Performance evaluation (§ 63.2)
Performance test (§ 63.2)
Permitting authority (§ 63.2)
Plant site (§ 63.101)
Potential to emit (§ 63.2)
Pressure release (§ 63.161)
Primary fuel (§ 63.111)
Process heater (§ 63.111)
Process unit shutdown (§ 63.161)
Process wastewater (§ 63.101)
Process wastewater stream (§ 63.111)
Reactor (§ 63.111)
Recapture device (§ 63.101)
Repaired (§ 63.161)
Research and development facility (§ 63.101)
Routed to a process or route to a process (§ 63.161)
Run (§ 63.2)
Secondary fuel (§ 63.111)
Sensor (§ 63.161)
Specific gravity monitoring device (§ 63.111)
Start-up, shutdown, and malfunction plan (§ 63.101)
State (§ 63.2)
Stationary Source (§ 63.2)
Surge control vessel (§ 63.161)
Temperature monitoring device (§ 63.111)
Test method (§ 63.2)
Treatment process (§ 63.111)
Unit operation (§ 63.101)
Visible emission (§ 63.2)

(b) * * *

Acrylonitrile butadiene styrene latex resin (ABS latex) means ABS produced through an emulsion process; however, the product is not coagulated or dried as typically occurs in an emulsion process.

* * * * *

Aggregate batch vent stream means a gaseous emission stream containing only the exhausts from two or more batch process vents that are ducted, hardpiped, or otherwise connected together for a continuous flow .

* * * * *

Annual average batch vent concentration is determined using Equation 1, as described in § 63.1323(h)(2) for halogenated compounds.

Annual average batch vent flow rate is determined by the procedures in § 63.1323(e)(3).

Annual average concentration, as used in the wastewater provisions, means the flow-weighted annual average concentration, as determined according to the procedures specified in § 63.144(b), with the exceptions noted in § 63.1330, for the purposes of this subpart.

Annual average flow rate, as used in the wastewater provisions, means the

annual average flow rate, as determined according to the procedures specified in § 63.144(c), with the exceptions noted in § 63.1330, for the purposes of this subpart.

Average batch vent concentration is determined by the procedures in § 63.1323(b)(5)(iii) for HAP concentrations and is determined by the procedures in § 63.1323(h)(1)(iii) for organic compounds containing halogens and hydrogen halides.

Average batch vent flow rate is determined by the procedures in § 63.1323(e)(1) and (e)(2).

* * * * *

Batch cycle means the operational step or steps, from start to finish, that occur as part of a batch unit operation.

* * * * *

Batch mass input limitation means an enforceable restriction on the total mass of HAP or material that can be input to a batch unit operation in one year.

Batch mode means the discontinuous bulk movement of material through a unit operation. Mass, temperature, concentration, and other properties may vary with time. For a unit operation operated in a batch mode (*i.e.,* batch unit operation), the addition of material and withdrawal of material do not typically occur simultaneously.

Batch process means, for the purposes of this subpart, a process where the reactor(s) is operated in a batch mode.

Batch process vent means a process vent with annual organic HAP emissions greater than 225 kilograms per year from a batch unit operation within an affected source. Annual organic HAP emissions are determined as specified in § 63.1323(b) at the location specified in § 63.1323(a)(2).

Batch unit operation means a unit operation operated in a batch mode.

Combined vent stream, as used in reference to batch process vents, continuous process vents, and aggregate batch vent streams, means the emissions from a combination of two or more of the aforementioned types of process vents. The primary occurrence of a combined vent stream is the combined emissions from a continuous process vent and a batch process vent.

* * * * *

Construction means the on-site fabrication, erection, or installation of an affected source. Construction also means the on-site fabrication, erection, or installation of a process unit or combination of process units which subsequently becomes an affected source or part of an affected source, due to a change in primary product.

Continuous mode means the continuous movement of material through a unit operation. Mass, temperature, concentration, and other properties typically approach steady-state conditions. For a unit operation operated in a continuous mode (*i.e.,* continuous unit operation), the simultaneous addition of raw material and withdrawal of product is typical.

Continuous process means, for the purposes of this subpart, a process where the reactor(s) is operated in a continuous mode.

Continuous process vent means a process vent containing greater than 0.005 weight percent total organic HAP from a continuous unit operation within an affected source. The total organic HAP weight percent is determined after the last recovery device, as described in § 63.115(a), and is determined as specified in § 63.115(c).

Continuous record means documentation, either in hard copy or computer readable form, of data values measured at least once every 15 minutes and recorded at the frequency specified in § 63.1335(d) or § 63.1335(h).

Continuous recorder means a data recording device that either records an instantaneous data value at least once every 15 minutes or records 1-hour or more frequent block average values.

Continuous unit operation means a unit operation operated in a continuous mode.

Control device is defined in § 63.111, except that the term ''continuous process vents subject to § 63.1315'' shall apply instead of the term ''process vents,'' for the purpose of this subpart.

* * * * *

Emission point means an individual continuous process vent, batch process vent, storage vessel, waste management unit, equipment leak, heat exchange system, or process contact cooling tower, or equipment subject to § 63.149.

Emulsion process means a process where the monomer(s) is dispersed in droplets throughout the water phase with the aid of an emulsifying agent such as soap or a synthetic emulsifier. The polymerization occurs either within the emulsion droplet or in the aqueous phase.

Equipment means, for the purposes of the provisions in § 63.1331 and the requirements in subpart H that are referred to in § 63.1331, each pump, compressor, agitator, pressure relief device, sampling connection system, open-ended valve or line, valve, connector, surge control vessel, bottoms receiver, and instrumentation system in organic hazardous air pollutant service; and any control devices or systems required by subpart H of this part.

Existing affected source is defined in § 63.1310(a)(3).

Existing process unit means any process unit that is not a new process unit.

* * * * *

Flexible operation unit means a process unit that manufactures different chemical products, polymers, or resins periodically by alternating raw materials or operating conditions. These units are also referred to as campaign plants or blocked operations.

Group 1 batch process vent means a batch process vent releasing annual organic HAP emissions greater than the level specified in § 63.1323(d) and with a cutoff flow rate, calculated in accordance with § 63.1323(f), greater than or equal to the annual average batch vent flow rate. Annual organic HAP emissions and annual average batch vent flow rate are determined at the exit of the batch unit operation, as described in § 63.1323(a)(2). Annual organic HAP emissions are determined as specified in § 63.1323(b), and annual average batch vent flow rate is determined as specified in § 63.1323(e).

* * * * *

Group 1 wastewater stream means a wastewater stream consisting of process wastewater from an existing or new affected source that meets the criteria for Group 1 status in § 63.132(c) and/or that meets the criteria for Group 1 status in § 63.132(d), with the exceptions listed in § 63.1330(b)(8) for the purposes of this subpart (*i.e.,* for organic HAP listed on Table 6 of this subpart only).

Group 2 wastewater stream means any process wastewater stream that does not meet the definition of a Group 1 wastewater stream.

* * * * *

Heat exchange system means any cooling tower system or once-through cooling water system (*e.g.,* river or pond water) designed and intended to operate to not allow contact between the cooling medium and process fluid or gases (*i.e.,* a noncontact system). A heat exchange system can include more than one heat exchanger and can include recirculating or once-through cooling systems.

Highest-HAP recipe for a product means the recipe of the product with the highest total mass of HAP charged to the reactor during the production of a single batch of product.

Initial start-up means the first time a new or reconstructed affected source begins production of a thermoplastic product, or, for equipment added or changed as described in § 63.1310(i), the first time the equipment is put into operation to produce a thermoplastic product. Initial start-up does not include operation solely for testing equipment. Initial start-up does not

include subsequent start-ups of an affected source or portion thereof following malfunctions or shutdowns or following changes in product for flexible operation units or following recharging of equipment in batch operation. Further, for purposes of § 63.1311 and § 63.1331, initial start-up does not include subsequent start-ups of affected sources or portions thereof following malfunctions or process unit shutdowns.

Maintenance wastewater is defined in § 63.101, except that the term ''thermoplastic product process unit'' shall apply wherever the term ''chemical manufacturing process unit'' is used. Further, the generation of wastewater from the routine rinsing or washing of equipment in batch operation between batches is not maintenance wastewater, but is considered to be process wastewater, for the purposes of this subpart.

Mass process means a polymerization process carried out through the use of thermal energy. Mass processes do not utilize emulsifying or suspending agents, but may utilize catalysts or other additives.

Material recovery section means, for PET plants, the equipment that recovers by-product methanol from any process section for use, reuse, or sale, or the equipment that separates materials containing by-product methanol from any process section for off-site purification or treatment with the intent to recover methanol for reuse. For polystyrene plants, material recovery section means the equipment that recovers unreacted styrene from any process section for use, reuse, or sale, or the equipment that separates materials containing unreacted styrene from any process section for off-site purification or treatment with the intent to recover styrene for reuse. Equipment used to store recovered materials (*i.e.*, ethylene glycol, methanol, or styrene) is not included. Equipment designed to recover or separate materials from the polymer product is to be included in this process section, provided that at the time of initial compliance some of the unreacted or by-product material is recovered for return to the TPPU, or sale, or provided that some of the separated material is sent for off-site purification or treatment with the intent to recover the unreacted or by-product material for reuse. Otherwise, such equipment is to be assigned to one of the other process sections, as appropriate. If equipment is used to recover unreacted or by-product material and return it directly to the same piece of process equipment from which it was emitted, then that recovery equipment is considered part of the process section that contains the process equipment. On the other hand, if equipment is used to recover unreacted or by-product material and return it to a different piece of process equipment in the same process section, that recovery equipment is considered part of a material recovery section. Equipment used for the on-site recovery of ethylene glycol from PET plants, however, is not included in the material recovery section; such equipment is to be included in the polymerization reaction section. Equipment used for the on-site recovery of both ethylene glycol and any other materials from PET plants is not included in the material recovery section; this equipment is to be included in the polymerization reaction section. Such equipment includes both contact and non-contact condensers removing ethylene glycol from vapor streams coming out of polymerization vessels.

Maximum true vapor pressure is defined in § 63.111, except that the terms ''transfer'' or ''transferred'' shall not apply for purposes of this subpart.

* * * * *

Multicomponent system means, as used in conjunction with batch process vents, a stream whose liquid and/or vapor contains more than one compound.

New process unit means a process unit for which the construction or reconstruction commenced after March 29, 1995.

* * * * *

On-site or *On site* means, with respect to records required to be maintained by this subpart or required by another subpart referenced by this subpart, that records are stored at a location within a major source which encompasses the affected source. On-site includes, but is not limited to, storage at the affected source or TPPU to which the records pertain, or storage in central files elsewhere at the major source.

Operating day means the period defined by the owner or operator in the Notification of Compliance Status required by § 63.1335(e)(5). The operating day is the period for which daily average monitoring values and batch cycle daily average monitoring values are determined.

Organic hazardous air pollutant(s) (organic HAP) means one or more of the chemicals listed in Table 6 of this subpart or any other chemical which is:

(1) Knowingly produced or introduced into the manufacturing process other than as an impurity; and

(2) Listed in Table 2 of subpart F of this part.

* * * * *

Polymerization reaction section means the equipment designed to cause monomer(s) to react to form polymers, including equipment designed primarily to cause the formation of short polymer chains (*e.g.,* oligomers or low molecular weight polymers), but not including equipment designed to prepare raw materials for polymerization (*e.g.,* esterification vessels). For the purposes of these standards, the polymerization reaction section begins with the equipment used to transfer the materials from the raw materials preparation section and ends with the last vessel in which polymerization occurs. Equipment used for the on-site recovery of ethylene glycol from PET plants is included in this process section, rather than in the material recovery process section.

* * * * *

Process unit means a collection of equipment assembled and connected by hardpiping or duct work, used to process raw materials and to manufacture a product.

Process vent means a gaseous emission stream from a unit operation that is discharged to the atmosphere either directly or after passing through one or more control, recovery, or recapture devices. Unit operations that may have process vents are condensers, distillation units, reactors, or other unit operations within the TPPU. Process vents exclude pressure releases, gaseous streams routed to a fuel gas system(s), and leaks from equipment regulated under § 63.1331. A gaseous emission stream is no longer considered to be a process vent after the stream has been controlled and monitored in accordance with the applicable provisions of this subpart.

Product means a polymer produced using the same monomers and varying in additives (*e.g.*, initiators, terminators, etc.); catalysts; or in the relative proportions of monomers, that is manufactured by a process unit. With respect to polymers, more than one recipe may be used to produce the same product. As an example, styrene acrylonitrile resin and methyl methacrylate butadiene styrene resin each represent a different product. Product also means a chemical that is not a polymer, that is manufactured by a process unit. By-products, isolated intermediates, impurities, wastes, and trace contaminants are not considered products.

Raw materials preparation section means the equipment at a polymer

manufacturing plant designed to prepare raw materials, such as monomers and solvents, for polymerization. For the purposes of the standards in this subpart, this process section includes the equipment used to transfer raw materials from storage and/or the equipment used to transfer recovered material from the material recovery process sections to the raw material preparation section, and ends with the last piece of equipment that prepares the material for polymerization. The raw materials preparation section may include equipment that is used to purify, dry, or otherwise treat raw materials or raw and recovered materials together; to activate catalysts; or to promote esterification including the formation of some short polymer chains (oligomers). The raw materials preparation section does not include equipment that is designed primarily to accomplish the formation of oligomers, the treatment of recovered materials alone, or the storage of raw or recovered materials.

Recipe means a specific composition, from among the range of possible compositions that may occur within a product, as defined in this section. A recipe is determined by the proportions of monomers and, if present, other reactants and additives that are used to make the recipe. For example, acrylonitrile butadiene styrene latex resin (ABS latex) without additives; ABS latex with an additive; and ABS latex with different proportions of acrylonitrile to butadiene are all different recipes of the same product, ABS latex.

Reconstruction means the addition of new components or the replacement of existing components at an affected source or at a previously unaffected stationary source that becomes an affected source as a result of the change, to such an extent that:

(1) The fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct a comparable affected new source; and

(2) It is technologically and economically feasible for the reconstructed source to meet the provisions of this subpart.

Recovery device means:

(1) An individual unit of equipment capable of and normally used for the purpose of recovering chemicals for:

(i) Use;

(ii) Reuse;

(iii) Fuel value (*i.e.,* net heating value); or

(iv) For sale for use, reuse, or fuel value (*i.e.,* net heating value).

(2) Examples of equipment that may be recovery devices include absorbers, carbon adsorbers, condensers, oil-water separators or organic-water separators, or organic removal devices such as decanters, strippers, or thin-film evaporation units. For the purposes of the monitoring, recordkeeping, or reporting requirements of this subpart, recapture devices are considered recovery devices.

Recovery operations equipment means the equipment used to separate the components of process streams. Recovery operations equipment includes distillation units, condensers, etc. Equipment used for wastewater treatment and recovery or recapture devices used as control devices shall not be considered recovery operations equipment.

Residual is defined in § 63.111, except that when the definition in § 63.111 uses the term ''Table 9 compounds,'' the term ''organic HAP listed in Table 6 of subpart JJJ'' shall apply for purposes of this subpart.

Shutdown means for purposes including, but not limited to, periodic maintenance, replacement of equipment, or repair, the cessation of operation of an affected source, a TPPU(s) within an affected source, a waste management unit or unit operation within an affected source, or equipment required or used to comply with this subpart, or the emptying or degassing of a storage vessel. For purposes of the wastewater provisions of § 63.1330, shutdown does not include the routine rinsing or washing of equipment in batch operation between batches. For purposes of the batch process vent provisions in §§ 63.1321 through 63.1327, the cessation of equipment in batch operation is not a shutdown, unless the equipment undergoes maintenance, is replaced, or is repaired.

Solid state polymerization process means a unit operation which, through the application of heat, furthers the polymerization (*i.e.*, increases the intrinsic viscosity) of polymer chips.

Start-up means the setting into operation of an affected source, a TPPU(s) within an affected source, a waste management unit or unit operation within an affected source, or equipment required or used to comply with this subpart, or a storage vessel after emptying and degassing. For both continuous and batch processes, start-up includes initial start-up and operation solely for testing equipment. For both continuous and batch processes, start-up does not include the recharging of equipment in batch operation. For continuous processes, start-up includes transitional conditions due to changes in product for flexible operation units. For batch processes, start-up does not include transitional conditions due to changes in product for flexible operation units.

Steady-state conditions means that all variables (temperatures, pressures, volumes, flow rates, *etc.*) in a process do not vary significantly with time; minor fluctuations about constant mean values may occur.

Storage vessel means a tank or other vessel that is used to store liquids that contain one or more organic HAP. Storage vessels do not include:

(1) Vessels permanently attached to motor vehicles such as trucks, railcars, barges, or ships;

(2) Pressure vessels designed to operate in excess of 204.9 kilopascals and without emissions to the atmosphere;

(3) Vessels with capacities smaller than 38 cubic meters;

(4) Vessels and equipment storing and/or handling material that contains no organic HAP and/or organic HAP as impurities only;

(5) Wastewater storage tanks; and

(6) Surge control vessels and bottoms receivers.

* * * * *

Supplemental combustion air means the air that is added to a vent stream after the vent stream leaves the unit operation. Air that is part of the vent stream as a result of the nature of the unit operation is not considered supplemental combustion air. Air required to operate combustion device burner(s) is not considered supplemental combustion air. Air required to ensure the proper operation of catalytic oxidizers, to include the intermittent addition of air upstream of the catalyst bed to maintain a minimum threshold flow rate through the catalyst bed or to avoid excessive temperatures in the catalyst bed, is not considered to be supplemental combustion air.

Suspension process means a polymerization process where the monomer(s) is in a state of suspension, with the help of suspending agents, in a medium other than water (typically an organic solvent). The resulting polymers are not soluble in the reactor medium.

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* * * * *

Thermoplastic product process unit (TPPU) means a collection of equipment assembled and connected by hard-piping or ductwork, used to process raw materials and to manufacture a thermoplastic product as its primary product. This collection of equipment includes unit operations; recovery

operations equipment, process vents; equipment identified in § 63.149; storage vessels, as determined in § 63.1310(g); and the equipment that is subject to the equipment leak provisions as specified in § 63.1331. Utilities, lines and equipment not containing process fluids, and other non-process lines, such as heating and cooling systems which do not combine their materials with those in the processes they serve, are not part of the thermoplastic product process unit. A thermoplastic product process unit consists of more than one unit operation.

* * * * *

Total resource effectiveness index value or TRE index value means a measure of the supplemental total resource requirement per unit reduction organic HAP associated with a continuous process vent stream, based on vent stream flow rate, emission rate of organic HAP, net heating value, and corrosion properties (whether or not the continuous process vent stream contains halogenated compounds), as quantified by the equations given under § 63.115.

Vent stream, as used in reference to batch process vents, continuous process vents, and aggregate batch vent streams, means the emissions from one or more process vents.

Waste management unit is defined in § 63.111, except that where the definition in § 63.111 uses the term ''chemical manufacturing process unit,'' the term ''TPPU'' shall apply for purposes of this subpart.

Wastewater means water that:

(1) Contains either:

(i) An annual average concentration of organic HAP listed on Table 6 of this subpart, except for ethylene glycol, of at least 5 parts per million by weight and has an annual average flow rate of 0.02 liter per minute or greater; or

(ii) An annual average concentration of organic HAP listed on Table 6 of this subpart, except for ethylene glycol, of at least 10,000 parts per million by weight at any flow rate; and

(2) Is discarded from a TPPU that is part of an affected source. Wastewater is process wastewater or maintenance wastewater.

Wastewater stream means a stream that contains wastewater as defined in this section.

32. Section 63.1313 is amended by:

a. Revising paragraph (a) introductory text;

b. Revising paragraph (a)(2);

c. Revising paragraph (b);

d. Revising paragraph (c); and

e. Adding paragraph (d).

The revisions and additions read as follows:

§ 63.1313 Emission standards.

(a) Except as allowed under paragraphs (b) through (d) of this section, the owner or operator of an existing or new affected source shall comply with the provisions in:

* * * * *

(2) Section 63.1315, or §§ 63.1316 through 63.1320, as appropriate, for continuous process vents;

* * * * *

(b) When emissions of different kinds (*i.e.,* emissions from continuous process vents subject to either § 63.1315 or §§ 63.1316 through 63.1320, batch process vents, aggregate batch vent streams, storage vessels, process wastewater, and/or in-process equipment subject to § 63.149) are combined, and at least one of the emission streams would be classified as Group 1 in the absence of combination with other emission streams, the owner or operator shall comply with the requirements of either paragraph (b)(1) or (b)(2) of this section, as appropriate. For purposes of this paragraph (b), combined emission streams containing one or more batch process vents and containing one or more continuous process vents subject to § 63.1315, § 63.1316(b)(1)(i)(A), § 63.1316(b)(1)(ii), § 63.1316(b)(2)(i), § 63.1316(b)(2)(ii), or § 63.1316(c)(1), excluding § 63.1316(c)(1)(ii), may comply with either paragraph (b)(1) or (b)(2) of this section, as appropriate. For purposes of this paragraph (b), the owner or operator of an affected source with combined emission streams containing one or more batch process vents but not containing one or more continuous process vents subject to § 63.1315, § 63.1316(b)(1)(i)(A), § 63.1316(b)(1)(ii), § 63.1316(b)(2)(i), § 63.1316(b)(2)(ii), or § 63.1316(c)(1), excluding § 63.1316(c)(1)(ii), shall comply with paragraph (b)(3) of this section.

(1) Comply with the applicable requirements of this subpart for each kind of emission in the stream as specified in paragraphs (a)(1) through (a)(7) of this section.

(2) Comply with the first set of requirements, identified in paragraphs (b)(2)(i) through (b)(2)(vi) of this section, which applies to any individual emission stream that is included in the combined stream, where either that emission stream would be classified as Group 1 in the absence of combination with other emission streams, or the owner or operator chooses to consider that emission stream to be Group 1 for purposes of this paragraph. Compliance with the first applicable set of requirements identified in paragraphs (b)(2)(i) through (b)(2)(vi) of this section constitutes compliance with all other requirements in paragraphs (b)(2)(i) through (b)(2)(vi) of this section applicable to other types of emissions in the combined stream.

(i) The requirements of this subpart for Group 1 continuous process vents subject to § 63.1315, including applicable monitoring, recordkeeping, and reporting;

(ii) The requirements of § 63.1316(b)(1)(i)(A), § 63.1316(b)(1)(ii), § 63.1316(b)(2)(i), § 63.1316(b)(2)(ii), or § 63.1316(c)(1), excluding § 63.1316(c)(1)(ii), as appropriate, for control of emissions from continuous process vents subject to the control requirements of § 63.1316, including applicable monitoring, recordkeeping, and reporting requirements;

(iii) The requirements of § 63.119(e), as specified in § 63.1314, for control of emissions from Group 1 storage vessels, including applicable monitoring, recordkeeping, and reporting;

(iv) The requirements of § 63.139, as specified in § 63.1330, for control devices used to control emissions from waste management units, including applicable monitoring, recordkeeping, and reporting;

(v) The requirements of § 63.139, as specified in § 63.1330, for closed vent systems for control of emissions from in-process equipment subject to § 63.149, as specified in § 63.1330, including applicable monitoring, recordkeeping, and reporting; or

(vi) The requirements of this subpart for aggregate batch vent streams subject to § 63.1321(c), including applicable monitoring, recordkeeping, and reporting.

(3) The owner or operator of an affected source with combined emission streams containing one or more batch process vents but not containing one or more continuous process vents subject to § 63.1315, § 63.1316(b)(1)(i)(A), § 63.1316(b)(1)(ii), § 63.1316(b)(2)(i), § 63.1316(b)(2)(ii), or § 63.1316(c)(1), excluding § 63.1316(c)(1)(ii), shall comply with paragraph (b)(3)(i) and (b)(3)(ii) of this section.

(i) The owner or operator of the affected source shall comply with § 63.1321 for the batch process vent(s).

(ii) The owner or operator of the affected source shall comply with either paragraph (b)(1) or (b)(2) of this section, as appropriate, for the remaining emission streams.

(c) Instead of complying with §§ 63.1314, 63.1315, 63.1316 through 63.1320, 63.1321, and 63.1330, the owner or operator of an existing affected source may elect to control any or all of the storage vessels, batch process vents, aggregate batch vent streams,

continuous process vents, and wastewater streams and associated waste management units within the affected source to different levels using an emissions averaging compliance approach that uses the procedures specified in § 63.1332. The restrictions concerning which emission points may be included in an emissions average, including how many emission points may be included, are specified in § 63.1332(a)(1). An owner or operator electing to use emissions averaging shall still comply with the provisions of §§ 63.1314, 63.1315, 63.1316 through 63.1320, 63.1321, and 63.1330 for affected source emission points not included in the emissions average.

(d) A State may decide not to allow the use of the emissions averaging compliance approach specified in paragraph (c) of this section.

33. Section 63.1314 is amended by:

a. Revising paragraph (a) introductory text;

b. Revising paragraph (a)(1) through (a)(3);

c. Revising paragraph (a)(5) through (a)(16);

d. Revising paragraph (b) introductory text;

e. Revising paragraph (c); and

f. Adding paragraph (a)(17).

The revisions and additions read as follows:

§ 63.1314 Storage vessel provisions.

(a) This section applies to each storage vessel that is assigned to an affected source, as determined by § 63.1310(g). Except as provided in paragraphs (b) through (d) of this section, the owner or operator of an affected source shall comply with the requirements of §§ 63.119 through 63.123 and 63.148 for those storage vessels, with the differences noted in paragraphs (a)(1) through (a)(17) of this section for the purposes of this subpart.

(1) When the term ''storage vessel'' is used in §§ 63.119 through 63.123, the definition of this term in § 63.1312 shall apply for the purposes of this subpart.

(2) When the term ''Group 1 storage vessel'' is used in §§ 63.119 through 63.123, the definition of this term in § 63.1312 shall apply for the purposes of this subpart.

(3) When the term ''Group 2 storage vessel'' is used in §§ 63.119 through 63.123, the definition of this term in § 63.1312 shall apply for the purposes of this subpart.

* * * * *

(5) When December 31, 1992, is referred to in § 63.119, March 29, 1995 shall apply instead, for the purposes of this subpart.

(6) When April 22, 1994, is referred to in § 63.119, June 19, 2000 shall apply instead, for the purposes of this subpart.

(7) Each owner or operator of an affected source shall comply with this paragraph (a)(7) instead of § 63.120(d)(1)(ii) for the purposes of this subpart. If the control device used to comply with § 63.119(e) is also used to comply with any of the requirements found in § 63.1315, § 63.1316, § 63.1322, or § 63.1330, the performance test required in or accepted by the applicable requirements of §§ 63.1315, 63.1316, 63.1322, and 63.1330 is acceptable for demonstrating compliance with § 63.119(e) for the purposes of this subpart. The owner or operator is not required to prepare a design evaluation for the control device as described in § 63.120(d)(1)(i), if the performance test meets the criteria specified in paragraphs (a)(7)(i) and (a)(7)(ii) of this section.

(i) The performance test demonstrates that the control device achieves greater than or equal to the required control efficiency specified in § 63.119(e)(1) or § 63.119(e)(2), as applicable; and

(ii) The performance test is submitted as part of the Notification of Compliance Status required by § 63.1335(e)(5).

(8) When the term ''range'' is used in §§ 63.120(d)(3), 63.120(d)(5), and 63.122(g)(2), the term ''level'' shall apply instead, for the purposes of this subpart.

(9) For purposes of this subpart, the monitoring plan required by § 63.120(d)(2) shall specify for which control devices the owner or operator has selected to follow the procedures for continuous monitoring specified in § 63.1334. For those control devices for which the owner or operator has selected to not follow the procedures for continuous monitoring specified in § 63.1334, the monitoring plan shall include a description of the parameter or parameters to be monitored to ensure that the control device is being properly operated and maintained, an explanation of the criteria used for selection of that parameter (or parameters), and the frequency with which monitoring will be performed (*e.g.,* when the liquid level in the storage vessel is being raised), as specified in § 63.120(d)(2)(i).

(10) For purposes of this subpart, the monitoring plan required by § 63.122(b) shall be included in the Notification of Compliance Status required by § 63.1335(e)(5).

(11) When the Notification of Compliance Status requirements contained in § 63.152(b) are referred to in §§ 63.120, 63.122, and 63.123, the Notification of Compliance Status requirements contained in § 63.1335(e)(5) shall apply for the purposes of this subpart.

(12) When the Periodic Report requirements contained in § 63.152(c) are referred to in §§ 63.120 and 63.122, the Periodic Report requirements contained in § 63.1335(e)(6) shall apply for the purposes of this subpart.

(13) When other reports as required in § 63.152(d) are referred to in § 63.122, the reporting requirements contained in § 63.1335(e)(7) shall apply for the purposes of this subpart.

(14) When the Initial Notification requirements contained in § 63.151(b) are referred to in § 63.122, the owner or operator of an affected source subject to this subpart need not comply for the purposes of this subpart.

(15) When the determination of equivalence criteria in § 63.102(b) is referred to in § 63.121(a), the provisions in § 63.6(g) shall apply for the purposes of this subpart.

(16) When § 63.119(a) requires compliance according to the schedule provisions in § 63.100, owners and operators of affected sources shall instead comply with the requirements in §§ 63.119(a)(1) through 63.119(a)(4) by the compliance date for storage vessels, which is specified in § 63.1311.

(17) In § 63.120(e)(1), instead of the reference to § 63.11(b), the requirements of § 63.1333(e) shall apply.

(b) Owners or operators of Group 1 storage vessels that are assigned to a new affected source producing SAN using a continuous process shall control emissions to the levels indicated in paragraphs (b)(1) and (b)(2) of this section.

* * * * *

(c) Owners or operators of Group 1 storage vessels that are assigned to a new or existing affected source producing ASA/AMSAN shall control emissions by at least 98 percent relative to uncontrolled emissions.

* * * * *

34. Section 63.1315 is amended by:

a. Revising paragraphs (a)(1) through (a)(4);

b. Revising paragraphs (a)(9) through (a)(17);

c. Revising paragraph (b) introductory text;

d. Revising paragraph (b)(1)(ii);

e. Revising paragraph (c); and

f. Revising paragraph (d).

The revisions read as follows:

§ 63.1315 Continuous process vents provisions.

(a) * * *

(1) When the term ''process vent'' is used in §§ 63.113 through 63.118, the

term ''continuous process vent,'' and the definition of this term in § 63.1312 shall apply for the purposes of this subpart.

(2) When the term ''Group 1 process vent'' is used in §§ 63.113 through 63.118, the term ''Group 1 continuous process vent,'' and the definition of this term in § 63.1312 shall apply for the purposes of this subpart.

(3) When the term ''Group 2 process vent'' is used in §§ 63.113 through 63.118, the term ''Group 2 continuous process vent,'' and the definition of this term in § 63.1312 shall apply for the purposes of this subpart.

(4) When December 31, 1992 is referred to in § 63.113, apply the date March 29, 1995, for the purposes of this subpart.

* * * * *

(9) When § 63.114(e) specifies that an owner or operator shall submit the information required in § 63.152(b) in order to establish the parameter monitoring range, the owner or operator of an affected source shall comply with the provisions of § 63.1334 for establishing the parameter monitoring level and shall comply with § 63.1335(e)(5) for purposes of reporting information related to establishment of the parameter monitoring level for purposes of this subpart. Further, the term ''level'' shall apply when the term ''range'' is used in §§ 63.114, 63.117, and 63.118.

(10) When reports of process changes are required under § 63.118(g), (h), (i), or (j), paragraphs (a)(10)(i) through (a)(10)(iv) of this section shall apply for the purposes of this subpart. In addition, for the purposes of this subpart, paragraph (a)(10)(v) of this section applies, and § 63.118(k) does not apply to owners or operators of affected sources.

(i) For the purposes of this subpart, whenever a process change, as defined in § 63.115(e), is made that causes a Group 2 continuous process vent to become a Group 1 continuous process vent, the owner or operator shall submit a report within 180 days after the process change is made or with the next Periodic Report, whichever is later. A description of the process change shall be submitted with the report of the process change, and the owner or operator of the affected source shall comply with the Group 1 provisions in §§ 63.113 through 63.118 in accordance with § 63.1310(i)(2)(ii) or (i)(2)(iii), as applicable.

(ii) Whenever a process change, as defined in § 63.115(e), is made that causes a Group 2 continuous process vent with a TRE greater than 4.0 to become a Group 2 continuous process vent with a TRE less than 4.0, the owner or operator shall submit a report within 180 days after the process change is made or with the next Periodic Report, whichever is later. A description of the process change shall be submitted with the report of the process change, and the owner or operator shall comply with the provisions in § 63.113(d) by the dates specified in § 63.1311.

(iii) Whenever a process change, as defined in § 63.115(e), is made that causes a Group 2 continuous process vent with a flow rate less than 0.005 standard cubic meter per minute to become a Group 2 continuous process vent with a flow rate of 0.005 standard cubic meter per minute or greater and a TRE index value less than or equal to 4.0, the owner or operator shall submit a report within 180 days after the process change is made or with the next Periodic Report, whichever is later. A description of the process change shall be submitted with the report of the process change, and the owner or operator shall comply with the provisions in § 63.113(d) by the dates specified in § 63.1311.

(iv) Whenever a process change, as defined in § 63.115(e), is made that causes a Group 2 continuous process vent with an organic HAP concentration less than 50 parts per million by volume to become a Group 2 continuous process vent with an organic HAP concentration of 50 parts per million by volume or greater and a TRE index value less than or equal to 4.0, the owner or operator shall submit a report within 180 days after the process change is made or with the next Periodic Report, whichever is later. A description of the process change shall be submitted with the report of the process change, and the owner or operator shall comply with the provisions in § 63.113(d) by the dates specified in § 63.1311.

(v) The owner or operator is not required to submit a report of a process change if one of the conditions listed in paragraphs (a)(10)(v)(A), (a)(10)(v)(B), (a)(10)(v)(C), or (a)(10)(v)(D) of this section is met.

(A) The process change does not meet the definition of a process change in § 63.115(e);

(B) The vent stream flow rate is recalculated according to § 63.115(e) and the recalculated value is less than 0.005 standard cubic meter per minute;

(C) The organic HAP concentration of the vent stream is recalculated according to § 63.115(e) and the recalculated value is less than 50 parts per million by volume; or (D) The TRE index value is recalculated according to § 63.115(e) and the recalculated value is greater than 4.0, or for the affected sources producing methyl methacrylate butadiene styrene resin the recalculated value is greater than 6.7.

(11) When the provisions of § 63.116(c)(3) and (c)(4) specify that Method 18, 40 CFR part 60, appendix A shall be used, Method 18 or Method 25A, 40 CFR part 60, appendix A may be used for the purposes of this subpart. The use of Method 25A, 40 CFR part 60, appendix A shall conform with the requirements in paragraphs (a)(11)(i) and (a)(11)(ii) of this section.

(i) The organic HAP used as the calibration gas for Method 25A, 40 CFR part 60, appendix A shall be the single organic HAP representing the largest percent by volume of the emissions.

(ii) The use of Method 25A, 40 CFR part 60, appendix A is acceptable if the response from the high-level calibration gas is at least 20 times the standard deviation of the response from the zero calibration gas when the instrument is zeroed on the most sensitive scale.

(12) When § 63.118, periodic reporting and recordkeeping requirements, refers to § 63.152(f), the recordkeeping requirements in § 63.1335(d) shall apply for purposes of this subpart.

(13) If a batch process vent or aggregate batch vent stream is combined with a continuous process vent, the owner or operator of the affected source containing the combined vent stream shall comply with paragraph (a)(13)(i); with paragraph (a)(13)(ii) and with paragraph (a)(13)(iii) or (iv); or with paragraph (a)(13)(v) of this section, as appropriate.

(i) If a batch process vent or aggregate batch vent stream is combined with a Group 1 continuous process vent prior to the combined vent stream being routed to a control device, the owner or operator of the affected source containing the combined vent stream shall comply with the requirements in paragraph (a)(13)(i)(A) or (B) of this section.

(A) All requirements for a Group 1 process vent stream in §§ 63.113 through 63.118, except as otherwise provided in this section. As specified in § 63.1333(a)(1), performance tests shall be conducted at maximum representative operating conditions. For the purpose of conducting a performance test on a combined vent stream, maximum representative operating conditions shall be when batch emission episodes are occurring that result in the highest organic HAP emission rate (for the combined vent stream) that is achievable during one of the periods listed in § 63.1333(a)(1)(i) or § 63.1333(a)(1)(ii), without causing any

of the situations described in paragraphs (a)(13)(i)(A)(*1*) through (*3*) to occur.

(*1*) Causing damage to equipment.

(*2*) Necessitating that the owner or operator make product that does not meet an existing specification for sale to a customer; or

(*3*) Necessitating that the owner or operator make product in excess of demand.

(B) Comply with the provisions in § 63.1313(b)(1), as allowed under § 63.1313(b).

(ii) If a batch process vent or aggregate batch vent stream is combined with a continuous process vent prior to the combined vent stream being routed to a recovery device, the TRE index value for the combined vent stream shall be calculated at the exit of the last recovery device. The TRE shall be calculated during periods when one or more batch emission episodes are occurring that result in the highest organic HAP emission rate (in the combined vent stream that is being routed to the recovery device) that is achievable during the 6-month period that begins 3 months before and ends 3 months after the TRE calculation, without causing any of the situations described in paragraphs (a)(13)(ii)(A) through (C) to occur.

(A) Causing damage to equipment.

(B) Necessitating that the owner or operator make product that does not meet an existing specification for sale to a customer; or

(C) Necessitating that the owner or operator make product in excess of demand.

(iii) If the combined vent stream described in paragraph (a)(10)(ii) of this section meets the requirements in paragraphs (a)(13)(iii)(A), (B), and (C) of this section, the combined vent stream shall be subject to the requirements for Group 1 process vents in §§ 63.113 through 63.118, except as otherwise provided in this section, as applicable. Performance tests for the combined vent stream shall be conducted at maximum operating conditions, as described in paragraph (a)(13)(i) of this section.

(A) The TRE index value of the combined stream is less than or equal to 1.0;

(B) The flow rate of the combined vent stream is greater than or equal to 0.005 standard cubic meter per minute; and

(C) The total organic HAP concentration is greater than or equal to 50 parts per million by volume for the combined vent stream.

(iv) If the combined vent stream described in paragraph (a)(10)(ii) of this section meets the requirements in paragraph (a)(13)(iv)(A), (B), or (C) of this section, the combined vent stream shall be subject to the requirements for Group 2 process vents in §§ 63.113 through 63.118, except as otherwise provided in this section, as applicable.

(A) The TRE index value of the combined vent stream is greater than 1.0;

(B) The flow rate of the combined vent stream is less than 0.005 standard cubic meter per minute; or

(C) The total organic HAP concentration is less than 50 parts per million by volume for the combined vent stream.

(v) If a batch process vent or aggregate batch vent stream is combined with a Group 2 continuous process vent, the owner or operator shall comply with the requirements in either paragraph (a)(13)(v)(A) or (a)(13)(v)(B) of this section.

(A) The owner or operator shall comply with the requirements in §§ 63.113 through 63.118 for Group 1 process vents; or

(B) The owner or operator shall comply with § 63.1322(e)(2) for batch process vents and aggregate batch vent streams.

(14) If any gas stream that originates outside of an affected source that is subject to this subpart is normally conducted through the same final recovery device as any continuous process vent stream subject to this subpart, the owner or operator of the affected source with the combined vent stream shall comply with all requirements in §§ 63.113 through 63.118 of subpart G of this part, except as otherwise noted in this section, as applicable.

(i) Instead of measuring the vent stream flow rate at the sampling site specified in § 63.115(b)(1), the sampling site for vent stream flow rate shall be prior to the final recovery device and prior to the point at which the gas stream that is not controlled under this subpart is introduced into the combined vent stream.

(ii) Instead of measuring total organic HAP or TOC concentrations at the sampling site specified in § 63.115(c)(1), the sampling site for total organic HAP or TOC concentration shall be prior to the final recovery device and prior to the point at which the gas stream that is not controlled under this subpart is introduced into the combined vent stream.

(iii) The efficiency of the final recovery device (determined according to paragraph (a)(14)(iv) of this section) shall be applied to the total organic HAP or TOC concentration measured at the sampling site described in paragraph (a)(14)(ii) of this section to determine the exit concentration. This exit concentration of total organic HAP or TOC shall then be used to perform the calculations outlined in § 63.115(d)(2)(iii) and § 63.115(d)(2)(iv), for the combined vent stream exiting the final recovery device.

(iv) The efficiency of the final recovery device is determined by measuring the total organic HAP or TOC concentration using Method 18 or 25A, 40 CFR part 60, appendix A, at the inlet to the final recovery device after the introduction of any gas stream that is not controlled under this subpart, and at the outlet of the final recovery device.

(15) When § 63.115(c)(3)(ii)(B) and (d)(2)(iv) and § 63.116(c)(3)(ii)(B) and (c)(4)(ii)(C) refer to Table 2 of subpart F of this part, the owner or operator is only required to consider organic HAP listed on Table 6 of this subpart for purposes of this subpart.

(16) The compliance date for continuous process vents subject to the provisions of this section is specified in § 63.1311.

(17) In § 63.116(a), instead of the reference to § 63.11(b), the requirements in § 63.1333(e) shall apply.

* * * * *

(b) Owners or operators of existing affected sources producing MBS shall comply with either paragraph (b)(1) or (b)(2) of this section.

(1) * * *

(ii) When complying with this paragraph (b) and the term ''TRE of 4.0'' is used, or related terms indicating a TRE index value of 4.0, referred to in §§ 63.113 through 63.118, are used, the term ''TRE of 6.7,'' shall apply instead, for the purposes of this subpart. The TRE range of 3.7 to 6.7 for continuous process vents at existing affected sources producing MBS corresponds to the TRE range of 1.0 to 4.0 for other continuous process vents, as it applies to monitoring, recordkeeping, and reporting.

* * * * *

(c) Owners or operators of new affected sources producing SAN using a batch process shall comply with the applicable requirements in § 63.1321.

(d) Affected sources producing PET or polystyrene using a continuous process are not subject to the provisions of this section and instead are subject to the emissions control provisions of § 63.1316, the monitoring provisions of § 63.1317, the testing and compliance demonstration provisions of § 63.1318, the recordkeeping provisions of § 63.1319, and the reporting provisions of § 63.1320. However, in some instances, as specified in § 63.1316, select continuous process vents present

at affected sources producing PET or polystyrene using a continuous process are subject to the provisions of this section.

* * * * *

35. Section 63.1316 is amended by:

a. Revising the section title;

b. Revising paragraph (a);

c. Revising paragraph (b); introductory text;

d. Revising paragraph (b)(1) introductory text;

e. Revising paragraph (b)(1)(i) introductory text;

f. Revising paragraphs (b)(1)(i)(A) and (b)(1)(i)(B);

g. Revising paragraphs (b)(1)(ii) (b)(1)(iii), and (b)(1)(iv);

h. Revising paragraph (b)(2) introductory text;

i. Revising paragraphs (b)(2)(i), (b)(2)(ii), (b)(2)(iii), and (b)(2)(iv);

j. Revising paragraph (c) introductory text;

k. Revising paragraph (c)(1) introductory text;

l. Revising paragraphs (c)(1)(i) and (c)(1)(ii);

m. Revising paragraph (c)(1)(iii)(A);

n. Revising paragraph (c)(1)(iii)(C); and

o. Revising paragraph (c)(3).

The revisions read as follows:

§ 63.1316 PET and polystyrene affected sources—emissions control provisions.

(a) The owner or operator of an affected source producing PET using a continuous process shall comply with paragraph (b) of this section. The owner or operator of an affected source producing polystyrene using a continuous process shall comply with paragraph (c) of this section. As specified in paragraphs (b) and (c) of this section, owners or operators shall comply with § 63.1315 for certain continuous process vents and with § 63.1321 for all batch process vents. The owner or operator of an affected source producing PET using a batch process or producing polystyrene using a batch process shall comply with § 63.1315 for continuous process vents and with § 63.1321 for batch process vents, instead of the provisions of §§ 63.1316 through 63.1320.

(b) The owner or operator of an affected source producing PET using a continuous process shall comply with the requirements specified in paragraphs (b)(1) or (b)(2) of this section, as appropriate, and are not required to comply with the requirements specified in 40 CFR part 60, subpart DDD. Compliance can be based on either organic HAP or TOC.

(1) The owner or operator of an affected source producing PET using a continuous dimethyl terephthalate process shall comply with paragraphs (b)(1)(i) through (b)(1)(iv) of this section.

(i) The owner or operator of an existing affected source with organic HAP emissions greater than 0.12 kg organic HAP per Mg of product from continuous process vents in the collection of material recovery sections (*i.e.,* methanol recovery) within the affected source shall comply with either paragraph (b)(1)(i)(A), (b)(1)(i)(B), or (b)(1)(i)(C) of this section. Emissions from continuous process vents in the collection of material recovery sections within the affected source shall be determined by the procedures specified in § 63.1318(b). The owner or operator of a new affected source shall comply with either paragraph (b)(1)(i)(A), (b)(1)(i)(B), or (b)(1)(i)(C) of this section.

(A) Organic HAP emissions from all continuous process vents in each individual material recovery section shall, as a whole, be no greater than 0.018 kg organic HAP per Mg of product from the associated TPPU(s); or alternatively, organic HAP emissions from all continuous process vents in the collection of material recovery sections within the affected source shall, as a whole, be no greater than 0.018 kg organic HAP per Mg product from all associated TPPU(s);

(B) As specified in § 63.1318(d), the owner or operator shall maintain the daily average outlet gas stream temperature from each final condenser in a material recovery section at a temperature of +3°C (+37°F) or less (*i.e.,* colder);

* * * * *

(ii) Limit organic HAP emissions from continuous process vents in the collection of polymerization reaction sections within the affected source by complying with either paragraph (b)(1)(ii)(A) or (b)(1)(ii)(B) of this section.

(A) Organic HAP emissions from all continuous process vents in each individual polymerization reaction section (including emissions from any equipment used to further recover ethylene glycol, but excluding emissions from process contact cooling towers) shall, as a whole, be no greater than 0.02 kg organic HAP per Mg of product from the associated TPPU(s); or alternatively, organic HAP emissions from all continuous process vents in the collection of polymerization reaction sections within the affected source shall, as a whole, be no greater than 0.02 kg organic HAP per Mg product from all associated TPPU(s); or

(B) Comply with paragraph (b)(1)(v) of this section.

(iii) Continuous process vents not included in a material recovery section, as specified in paragraph (b)(1)(i) of this section, and not included in a polymerization reaction section, as specified in paragraph (b)(1)(ii) of this section, shall comply with § 63.1315.

(iv) Batch process vents shall comply with § 63.1321.

* * * * *

(2) The owner or operator of an affected source producing PET using a continuous terephthalic acid process shall comply with paragraphs (b)(2)(i) through (b)(2)(iv) of this section.

(i) Limit organic HAP emissions from continuous process vents in the collection of raw material preparation sections within the affected source by complying with either paragraph (b)(2)(i)(A) or (b)(2)(i)(B) of this section.

(A) Organic HAP emissions from all continuous process vents associated with the esterification vessels in each individual raw materials preparation section shall, as a whole, be no greater than 0.04 kg organic HAP per Mg of product from the associated TPPU(s); or alternatively, organic HAP emissions from all continuous process vents associated with the esterification vessels in the collection of raw material preparation sections within the affected source shall, as a whole, be no greater than 0.04 kg organic HAP per Mg of product from all associated TPPU(s). Other continuous process vents (*i.e.,* those not associated with the esterification vessels) in the collection of raw materials preparation sections within the affected source shall comply with § 63.1315; or

(B) Comply with paragraph (b)(2)(v) of this section.

(ii) Limit organic HAP emissions from continuous process vents in the collection of polymerization reaction sections within the affected source by complying with either paragraph (b)(2)(ii)(A) or (b)(2)(ii)(B) of this section.

(A) Organic HAP emissions from all continuous process vents in each individual polymerization reaction section (including emissions from any equipment used to further recover ethylene glycol, but excluding emissions from process contact cooling towers) shall, as a whole, be no greater than 0.02 kg organic HAP per Mg of product from the associated TPPU(s); or alternatively, organic HAP emissions from all continuous process vents in the collection of polymerization reaction sections within the affected source shall, as a whole, be no greater than 0.02 kg organic HAP per Mg of product from all associated TPPU(s); or

(B) Comply with paragraph (b)(2)(v) of this section.

(iii) Continuous process vents not included in a raw materials preparation section, as specified in paragraphs (b)(2)(i) of this section, and not included in a polymerization reaction section, as specified in paragraph (b)(2)(ii) of this section, shall comply with § 63.1315.

(iv) Batch process vents shall comply with § 63.1321.

* * * * *

(c) The owner or operator of an affected source producing polystyrene resin using a continuous process shall comply with the requirements specified in paragraphs (c)(1) through (c)(3) of this section, as appropriate, instead of the requirements specified in 40 CFR part 60, subpart DDD. Compliance can be based on either organic HAP or TOC.

(1) Limit organic HAP emissions from continuous process vents in the collection of material recovery sections within the affected source by complying with either paragraph (c)(1)(i), (c)(1)(ii), or (c)(1)(iii) of this section.

(i) Organic HAP emissions from all continuous process vents in each individual material recovery section shall, as a whole, be no greater than 0.0036 kg organic HAP per Mg of product from the associated TPPU(s); or alternatively, organic HAP emissions from all continuous process vents in the collection of material recovery sections within the affected source shall, as a whole, be no greater than 0.0036 kg organic HAP per Mg of product from all associated TPPU(s);

(ii) As specified in § 63.1318(d), the owner or operator shall maintain the daily average outlet gas stream temperature from each final condenser in a material recovery section at a temperature of −25°C (−13°F) or less (*i.e.,* colder); or

(iii) * * *

(A) Reduce the emissions in a combustion device to achieve 98 weight percent reduction or to achieve a concentration of 20 parts per million by volume (ppmv) on a dry basis, whichever is less stringent. If an owner or operator elects to comply with the 20 ppmv standard, the concentration shall include a correction to 3 percent oxygen only when supplemental combustion air is used to combust the emissions;

* * * * *

(C) Combust the emissions in a flare that complies with the requirements of § 63.1333(e).

* * * * *

(3) Batch process vents shall comply with § 63.1321.

36. Section 63.1317 is revised (including the section title) to read as follows:

§ 63.1317 PET and polystyrene affected sources—monitoring provisions.

Continuous process vents using a control or recovery device to comply with § 63.1316 shall comply with the applicable monitoring provisions specified for continuous process vents in § 63.1315(a), except that references to group determinations (*i.e.,* total resource effectiveness) do not apply and owners or operators are not required to comply with § 63.113.

37. Section 63.1318 is amended by:

a. Revising the section title;

b. Revising paragraph (a);

c. Revising paragraph (b) introductory text;

d. Revising paragraph (b)(1)(i) introductory text;

e. Revising paragraph (c); and

f. Revising paragraph (d).

The revisions read as follows:

§ 63.1318 PET and polystyrene affected sources—testing and compliance demonstration provisions.

(a) Except as specified in paragraphs (b) through (d) of this section, continuous process vents using a control or recovery device to comply with § 63.1316 shall comply with the applicable testing and compliance provisions for continuous process vents specified in § 63.1315, except that, for the purposes of this paragraph (a), references to group determinations (*i.e.,* total resource effectiveness) do not apply and owners or operators are not required to comply with § 63.113.

(b) *PET Affected Sources Using a Dimethyl Terephthalate Process—Applicability Determination Procedure.* Owners or operators shall calculate organic HAP emissions from the collection of material recovery sections at an existing affected source producing PET using a continuous dimethyl terephthalate process to determine whether § 63.1316(b)(1)(i) is applicable using the procedures specified in either paragraph (b)(1) or (b)(2) of this section.

(1) * * *

(i) The mass emission rate for each continuous process vent, E_i, shall be determined according to the procedures specified in § 63.116(c)(4). The sampling site for determining whether § 63.1316(b)(1)(i) is applicable shall be at the outlet of the last recovery or control device. When the provisions of § 63.116(c)(4) specify that Method 18, 40 CFR part 60, appendix A shall be used, Method 18 or Method 25A, 40 CFR part 60, appendix A may be used for the purposes of this subpart. The use of Method 25A, 40 CFR part 60, appendix A shall comply with paragraphs (b)(1)(i)(A) and (b)(1)(i)(B) of this section.

* * * * *

(c) *Compliance with Mass Emissions per Mass Product Standards.* Owners or operators complying with § 63.1316(b)(1)(i)(A), (b)(1)(ii), (b)(2)(i), (b)(2)(ii), and (c)(1)(i) shall demonstrate compliance with the mass emissions per mass product requirements using the procedures specified in paragraph (b)(1) of this section.

(d) *Compliance with Temperature Limits for Final Condensers.* Owners or operators complying with § 63.1316(b)(1)(i)(B) or § 63.1316(c)(1)(ii) shall demonstrate continuous compliance based on an average exit temperature determined for each operating day. Calculation of the daily average exit temperature shall follow the provisions of § 63.1335(d)(3). The provisions of § 63.1334(f) and (g) shall apply for the purposes of determining whether or not an owner or operator is to be deemed out of compliance for a given operating day.

38. Section 63.1319 is amended by:

a. Revising the section title;

b. Revising paragraph (a);

c. Revising paragraph (b) introductory text;

d. Revising paragraph (b)(2); and

e. Revising paragraph (c).

The revisions read as follows:

§ 63.1319 PET and polystyrene affected sources—recordkeeping provisions.

(a) Except as specified in paragraphs (b) and (c) of this section, owners or operators using a control or recovery device to comply with § 63.1316 shall comply with the applicable recordkeeping provisions specified in § 63.1315, except that, for the purposes of this paragraph (a), references to group determinations (*i.e.,* total resource effectiveness) do not apply, and owners or operators are not required to comply with § 63.113.

(b) *Records Demonstrating Compliance With the Applicability Determination Procedure for PET Affected Sources Using a Dimethyl Terephthalate Process.* Owners or operators complying with § 63.1316(b)(1)(i) by demonstrating that mass emissions per mass product are less than or equal to the level specified in § 63.1316(b)(1)(i) (*i.e.,* 0.12 kg organic HAP per Mg of product) shall keep the following records.

* * * * *

(2) Records of any change in process operation that increases the mass emissions per mass product.

(c) *Records Demonstrating Compliance with Temperature Limits for Final Condensers.* Owners or operators of continuous process vents complying with § 63.1316(b)(1)(i)(B) or § 63.1316(c)(1)(ii) shall keep records of

the daily averages required by § 63.1318, per the recordkeeping provisions specified in § 63.1335(d).

39. Section 63.1320 is revised to read as follows:

§ 63.1320 PET and polystyrene affected sources—reporting provisions.

(a) Except as specified in paragraph (b) of this section, owners and operators using a control or recovery device to comply with § 63.1316 shall comply with the applicable reporting provisions specified in § 63.1315, except that, for the purposes of this paragraph (a), references to group determinations (*i.e.,* total resource effectiveness) do not apply, and owners or operators are not required to comply with § 63.113.

(b) *Reporting for PET Affected Sources Using a Dimethyl Terephthalate Process.* Owners or operators complying with § 63.1316 by demonstrating that mass emissions per mass product are less than or equal to the level specified in § 63.1316(b)(1)(i) (*i.e.,* 0.12 kg organic HAP per Mg of product) shall comply with paragraphs (b)(1) through (b)(3) of this section.

(1) Include the information specified in § 63.1319(b)(2) in each Periodic Report, required by § 63.1335(e)(6), as appropriate.

(2) Include the information specified in § 63.1319(b)(1) in the Notification of Compliance Status, required by § 63.1335(e)(5).

(3) Whenever a process change, as defined in § 63.115(e), is made that causes emissions from continuous process vents in the collection of material recovery sections (*i.e.,* methanol recovery) within the affected source to be greater than 0.12 kg organic HAP per Mg of product, the owner or operator shall submit a report within 180 days after the process change is made or the information regarding the process change is known to the owner or operator. This report may be included in the next Periodic Report as specified in § 63.1335(e)(6)(iii)(D)(*2*). The report shall include the information specified in § 63.1319(b)(1) and a description of the process change.

40. Section 63.1321 is amended by revising paragraphs (a) and (c), to read as follows:

§ 63.1321 Batch process vents provisions.

(a) *Batch process vents.* Except as specified in paragraphs (b) through (d) of this section, owners and operators of new and existing affected sources with batch process vents shall comply with the requirements in §§ 63.1322 through 63.1327. The batch process vent group status shall be determined in accordance with § 63.1323. Owners or operators of batch process vents classified as Group 1 shall comply with the reference control technology requirements for Group 1 batch process vents in § 63.1322, the monitoring requirements in § 63.1324, the performance test methods and procedures to determine compliance in § 63.1325, the recordkeeping requirements in § 63.1326, and the reporting requirements in § 63.1327. Owners or operators of all Group 2 batch process vents shall comply with the applicable reference control technology requirements in § 63.1322, the applicable recordkeeping requirements in § 63.1326, and the applicable reporting requirements in § 63.1327.

* * * * *

(c) *Aggregate batch vent streams.* Aggregate batch vent streams, as defined in § 63.1312, are subject to the control requirements specified in § 63.1322(b), as well as the monitoring, testing, recordkeeping, and reporting requirements specified in §§ 63.1324 through 63.1327 for aggregate batch vent streams.

* * * * *

41. Section 63.1322 is amended by:

a. Revising paragraph (a) introductory text;

b. Revising paragraph (a)(1)(i);

c. Revising paragraph (b) introductory text;

d. Revising paragraph (b)(1)(i);

e. Revising paragraph (b)(2);

f. Revising paragraphs (c)(1) and (c)(2);

g. Revising paragraph (e);

h. Revising paragraph (f);

i. Revising paragraph (g); and

j. Adding paragraph (h).

The revisions and additions read as follows:

§ 63.1322 Batch process vents—reference control technology.

(a) *Batch process vents.* The owner or operator of a Group 1 batch process vent, as determined using the procedures in § 63.1323, shall comply with the requirements of either paragraph (a)(1) or (a)(2) of this section, except as provided for in paragraph (a)(3) of this section. Compliance may be based on either organic HAP or TOC.

(1) * * *

(i) The owner or operator shall comply with the requirements of § 63.1333(e) for the flare.

* * * * *

(b) *Aggregate batch vent streams.* The owner or operator of an aggregate batch vent stream that contains one or more Group 1 batch process vents shall comply with the requirements of either paragraph (b)(1) or (b)(2) of this section, except as provided for in paragraph (b)(3) of this section. Compliance may be based on either organic HAP or TOC.

(1) * * *

(i) The owner or operator shall comply with the requirements of § 63.1333(e) for the flare.

* * * * *

(2) For each aggregate batch vent stream, reduce organic HAP emissions by 90 weight percent or to a concentration of 20 parts per million by volume, whichever is less stringent, on a continuous basis using a control device. For purposes of complying with the 20 parts per million by volume outlet concentration standard, the outlet concentration shall be calculated on a dry basis. When a combustion device is used for purposes of complying with the 20 parts per million by volume outlet concentration standard, the concentration shall be corrected to 3 percent oxygen if supplemental combustion air is used to combust the emissions. If supplemental combustion air is not used, a correction to 3 percent oxygen is not required.

* * * * *

(c) * * *

(1) If a combustion device is used to comply with paragraph (a)(2), (a)(3), (b)(2), or (b)(3) of this section for a halogenated batch process vent, halogenated aggregate batch vent stream, or halogenated continuous process vent, said emissions exiting the combustion device shall be ducted to a halogen reduction device that reduces overall emissions of hydrogen halides and halogens by at least 99 percent before discharge to the atmosphere.

(2) A halogen reduction device may be used to reduce the halogen atom mass emission rate of said emissions to less than 3,750 kg/yr for batch process vents or aggregate batch vent streams and to less than 0.45 kilograms per hour for continuous process vents prior to venting to any combustion control device, and thus make the batch process vent, aggregate batch vent stream, or continuous process vent nonhalogenated. The nonhalogenated batch process vent, aggregate batch vent stream, or continuous process vent shall then comply with the requirements of either paragraph (a) or (b) of this section, as appropriate.

* * * * *

(e) *Combination of batch process vents or aggregate batch vent streams with continuous process vents.* If a batch process vent or aggregate batch vent stream is combined with a continuous process vent, the owner or operator shall determine whether the combined

vent stream is subject to the provisions of §§ 63.1321 through 63.1327 according to paragraphs (e)(1) and (e)(2) of this section.

(1) A batch process vent or aggregate batch vent stream combined with a continuous process vent is not subject to the provisions of §§ 63.1321 through 63.1327, if the requirements in paragraph (e)(1)(i) and in either paragraph (e)(1)(ii) or (e)(1)(iii) are met.

(i) The only emissions to the atmosphere from the batch process vent or aggregate batch vent stream prior to being combined with the continuous process vent are from equipment subject to § 63.1331.

(ii) The batch process vent or aggregate batch vent stream is combined with a Group 1 continuous process vent prior to the combined vent stream being routed to a control device. In this paragraph (e)(1)(ii), the definition of control device as it relates to continuous process vents shall be used. Furthermore, the combined vent stream discussed in this paragraph (e)(1)(ii) shall be subject to § 63.1315(a)(13)(i).

(iii) The batch process vent or aggregate batch vent stream is combined with a continuous process vent prior to being routed to a recovery device. In this paragraph (e)(1)(iii), the definition of recovery device as it relates to continuous process vents shall be used. Furthermore, the combined vent stream discussed in this paragraph (e)(1)(iii) shall be subject to § 63.1315(a)(13)(ii).

(2) If the batch process vent or aggregate batch vent stream is combined with a Group 2 continuous process vent, the group status of the batch process vent shall be determined prior to its combination with the Group 2 continuous process vent, in accordance with § 63.1323, and the combined vent stream shall be subject to the requirements for aggregate batch vent streams in §§ 63.1321 through 63.1327.

(f) *Group 2 batch process vents with annual emissions greater than or equal to the level specified in § 63.1323(d).* The owner or operator of a Group 2 batch process vent with annual emissions greater than or equal to the level specified in § 63.1323(d) shall comply with the provisions of paragraph (f)(1), (f)(2), or (h) of this section.

(1) The owner or operator of an affected source shall comply with the requirements in paragraphs (f)(1)(i) through (f)(1)(iv) of this section.

(i) The owner or operator shall establish a batch mass input limitation that ensures the Group 2 batch process vent does not become a Group 1 batch process vent.

(ii) Over the course of the affected source's ''year,'' as reported in the Notification of Compliance Status in accordance with § 63.1335(e)(5)(iv), the owner or operator shall not charge a mass of HAP or material to the batch unit operation that is greater than the level established as the batch mass input limitation.

(iii) The owner or operator shall comply with the recordkeeping requirements in § 63.1326(d)(2), and the reporting requirements in § 63.1327(a)(3), (b), and (c).

(iv) The owner or operator shall comply with § 63.1323(i) when process changes are made.

(2) Comply with the requirements of this subpart for Group 1 batch process vents.

(g) *Group 2 batch process vents with annual emissions less than the level specified in § 63.1323(d).* The owner or operator of a Group 2 batch process vent with annual emissions less than the level specified in § 63.1323(d) shall comply with paragraphs (g)(1), (g)(2), (g)(3), or (g)(4) of this section.

(1) The owner or operator of the affected source shall comply with the requirements in paragraphs (g)(1)(i) through (g)(1)(iv) of this section.

(i) The owner or operator shall establish a batch mass input limitation that ensures emissions do not exceed the level specified in § 63.1323(d).

(ii) Over the course of the affected source's ''year,'' as reported in the Notification of Compliance Status in accordance with § 63.1335(e)(5)(iv), the owner or operator shall not charge a mass of HAP or material to the batch unit operation that is greater than the level established as the batch mass input limitation.

(iii) The owner or operator shall comply with the recordkeeping requirements in § 63.1326(d)(1), and the reporting requirements in § 63.1327(a)(2), (b), and (c).

(iv) The owner or operator of the affected source shall comply with § 63.1323(i) when process changes are made.

(2) Comply with the requirements of paragraph (f)(1) of this section;

(3) Comply with the requirements of paragraph (f)(2) of this section; or

(4) Comply with the requirements of paragraph (h) of this section.

(h) Owners or operators of Group 2 batch process vents are not required to establish a batch mass input limitation if the batch process vent is Group 2 at the conditions specified in paragraphs (h)(1) and (h)(2) of this section and if the owner or operator complies with the recordkeeping provisions in §§ 63.1326(a)(1) through (3), 63.1326(a)(9), and 63.1326(a)(4) through (6) as applicable, and the reporting requirements in § 63.1327(a)(5), (a)(6), and (b).

(1) Emissions for the single highest-HAP recipe (considering all products that are produced in the batch unit operation) are used in the group determination; and

(2) The group determination assumes that the batch unit operation is operating at the maximum design capacity of the TPPU for 12 months.

42. Section 63.1323 is amended by:

a. Revising paragraph (a)(1);

b. Revising paragraph (b) introductory text;

c. Revising paragraphs (b)(1) and (b)(2);

d. Revising paragraphs (b)(4)(i)(A) through (b)(4)(i)(C);

e. Revising paragraph (b)(4)(ii)(B)(*1*);

f. Revising paragraph (b)(5) introductory text;

g. Revising paragraph (b)(5)(ii);

h. Revising paragraph (b)(5)(iii) introductory text;

i. Revising paragraph (b)(5)(iv);

j. Revising paragraph (b)(5)(v) introductory text;

k. Revising paragraph (b)(5)(v)(A);

l. Revising paragraph (b)(6);

m. Revising paragraph (d);

n. Revising paragraph (e) introductory text;

o. Revising paragraph (e)(1) introductory text;

p. Revising paragraph (e)(1)(i);

q. Revising paragraph (e)(1)(iii);

r. Revising paragraphs (e)(2) and (e)(3);

s. Revising paragraph (g);

t. Revising paragraph (h)(1)(iii);

u. Revising paragraph (h)(2);

v. Revising paragraph (i);

w. Revising paragraph (j) introductory text;

x. Revising paragraph (j)(3); and

y. Adding paragraph (b)(9).

The revisions and additions read as follows:

§ 63.1323 Batch process vents—methods and procedures for group determination.

(a) * * *

(1) The procedures specified in paragraphs (b) through (g) of this section shall be followed to determine the group status of each batch process vent. This determination shall be made in accordance with either paragraph (a)(1)(i) or (a)(1)(ii) of this section.

(i) An owner or operator may choose to determine the group status of a batch process vent based on the expected mix of products. For each product, emission characteristics of the single highest-HAP recipe, as defined in paragraph (a)(1)(iii) of this section, for that product shall be

used in the procedures in paragraphs (b) through (i) of this section.

(ii) An owner or operator may choose to determine the group status of a batch process vent based on annualized production of the single highest-HAP recipe, as defined in paragraph (a)(1)(iii) of this section, considering all products produced or processed in the batch unit operation. The annualized production of the highest-HAP recipe shall be based exclusively on the production of the single highest-HAP recipe of all products produced or processed in the batch unit operation for a 12 month period. The production level used may be the actual production rate. It is not necessary to assume a maximum production rate (*i.e.,* 8,760 hours per year at maximum design production).

(iii) The single highest-HAP recipe for a product means the recipe of the product with the highest total mass of HAP charged to the reactor during the production of a single batch of product.

* * * * *

(b) *Determination of annual emissions.* The owner or operator shall calculate annual uncontrolled TOC or organic HAP emissions for each batch process vent using the methods described in paragraphs (b)(1) through (b)(8) of this section. To estimate emissions from a batch emissions episode, owners or operators may use either the emissions estimation equations in paragraphs (b)(1) through (b)(4) of this section, or direct measurement as specified in paragraph (b)(5) of this section. Engineering assessment may be used to estimate emissions from a batch emission episode only under the conditions described in paragraph (b)(6) of this section. In using the emissions estimation equations in paragraphs (b)(1) through (b)(4) of this section, individual component vapor pressure and molecular weight may be obtained from standard references. Methods to determine individual HAP partial pressures in multicomponent systems are described in paragraph (b)(9) of this section. Other variables in the emissions estimation equations may be obtained through direct measurement, as defined in paragraph (b)(5) of this section, through engineering assessment, as defined in paragraph (b)(6)(ii) of this section, by process knowledge, or by any other appropriate means. Assumptions used in determining these variables must be documented. Once emissions for the batch emission episode have been determined using either the emissions estimation equations, direct measurement, or engineering assessment, emissions from a batch cycle shall be calculated in accordance with paragraph (b)(7) of this section, and annual emissions from the batch process vent shall be calculated in accordance with paragraph (b)(8) of this section.

(1) TOC or organic HAP emissions from the purging of an empty vessel shall be calculated using Equation 2 of this subpart. Equation 2 of this subpart does not take into account evaporation of any residual liquid in the vessel.

$$E_{episode} = \frac{(V_{ves})(P)(MW_{wavg})}{RT}\left(1 - 0.37^{m}\right) \qquad \text{[Eq. 2]}$$

Where:

$E_{episode}$ = Emissions, kg/episode.

V_{ves} = Volume of vessel, m^3.

P = TOC or total organic HAP partial pressure, kPa.

MW_{wavg} = Weighted average molecular weight of TOC or organic HAP in vapor, determined in accordance with paragraph (b)(4)(i)(D) of this section, kg/kmol.

R = Ideal gas constant, 8.314 $m^3 \cdot kPa/kmol \cdot K$.

T = Temperature of vessel vapor space, K.

m = Number of volumes of purge gas used.

(2) TOC or organic HAP emissions from the purging of a filled vessel shall be calculated using Equation 3 of this subpart.

$$E_{episode} = \frac{(y)(V_{dr})(P^2)(MW_{wavg})}{RT\left(P - \sum_{i=1}^{n} P_i x_i\right)}(T_m) \qquad \text{[Eq. 3]}$$

Where:

$E_{episode}$ = Emissions, kg/episode.

y = Saturated mole fraction of all TOC or organic HAP in vapor phase.

V_{dr} = Volumetric gas displacement rate, m^3/min.

P = Pressure in vessel vapor space, kPa.

MW_{wavg} = Weighted average molecular weight of TOC or organic HAP in vapor, determined in accordance with paragraph (b)(4)(i)(D) of this section, kg/kmol.

R = Ideal gas constant, 8.314 $m^3 \cdot kPa/kmol \cdot K$.

T = Temperature of vessel vapor space, K.

P_i = Vapor pressure of TOC or individual organic HAP i, kPa.

x_i = Mole fraction of TOC or organic HAP i in the liquid.

n = Number of organic HAP in stream. Note: Summation not applicable if TOC emissions are being estimated.

T_m = Minutes/episode.

* * * * *

(4) * * *

(i) * * *

(A) Emissions caused by heating of a vessel shall be calculated using Equation 5 of this subpart. The assumptions made for this calculation are atmospheric pressure of 760 millimeters of mercury (mm Hg) and the displaced gas is always saturated with volatile organic compounds (VOC) vapor in equilibrium with the liquid mixture.

$$E_{episode} = \left[\frac{\sum_{i=1}^{n} (P_i)_{T1}}{101.325 - \sum_{i=1}^{n} (P_i)_{T1}} + \frac{\sum_{i=1}^{n} (P_i)_{T2}}{101.325 - \sum_{i=1}^{n} (P_i)_{T2}} \right] * (\Delta\eta) \left[\frac{(MW_{WAVG,T1}) + (MW_{WAVG,T2})}{2} \right] \quad \text{[Eq. 5]}$$

Where:

$E_{episode}$ = Emissions, kg/episode.

$(P_i)_{T1}$, $(P_i)_{T2}$ = Partial pressure (kPa) of TOC or each organic HAP i in the vessel headspace at initial (T1) and final (T2) temperature.

n = Number of organic HAP in stream. Note: Summation not applicable if TOC emissions are being estimated.

$\Delta\eta$ = Number of kilogram-moles (kg-moles) of gas displaced, determined in accordance with paragraph (b)(4)(i)(B) of this section.

101.325 = Constant, kPa.

$(MW_{WAVG,T1})$, $(MW_{WAVG,T2})$ = Weighted average molecular weight of TOC or total organic HAP in the displaced gas stream, determined in accordance with paragraph (b)(4)(i)(D) of this section, kg/kmol.

(B) The moles of gas displaced, $\Delta\eta$, is calculated using Equation 6 of this subpart.

$$\Delta\eta = \frac{V_{fs}}{R} \left[\left(\frac{Pa_1}{T_1} \right) - \left(\frac{Pa_2}{T_2} \right) \right] \quad \text{[Eq. 6]}$$

Where:

$\Delta\eta$ = Number of kg-moles of gas displaced.

V_{fs} = Volume of free space in the vessel, m^3.

R = Ideal gas constant, 8.314 $m^3 \cdot kPa/kmol \cdot K$.

Pa_1 = Initial noncondensible gas partial pressure in the vessel, kPa.

Pa_2 = Final noncondensible gas partial pressure, kPa.

T_1 = Initial temperature of vessel, K.

T_2 = Final temperature of vessel, K.

(C) The initial and final pressure of the noncondensible gas in the vessel shall be calculated using Equation 7 of this subpart.

$$Pa = 101.325 - \sum_{i=1}^{n} (P_i)_T \quad \text{[Eq. 7]}$$

Where:

Pa = Initial or final partial pressure of noncondensible gas in the vessel headspace, kPa.

101.325 = Constant, kPa.

$(P_i)T$ = Partial pressure of TOC or each organic HAP i in the vessel headspace, kPa, at the initial or final temperature (T1 or T2).

n = Number of organic HAP in stream. Note: Summation not applicable if TOC emissions are being estimated.

* * * * *

(ii) * * *

(B) * * *

(*1*) If the final temperature of the heatup is at or lower than 5 K below the boiling point, the final temperature for the last increment shall be the final temperature for the heatup, even if the last increment is less than 5 K.

* * * * *

(5) The owner or operator may estimate annual emissions for a batch emission episode by direct measurement. If direct measurement is used, the owner or operator shall either perform a test for the duration of a representative batch emission episode or perform a test during only those periods of the batch emission episode for which the emission rate for the entire episode can be determined or for which the emissions are greater than the average emission rate of the batch emission episode. The owner or operator choosing either of these options shall develop an emission profile for the entire batch emission episode, based on either process knowledge or test data collected, to demonstrate that test periods are representative. Examples of information that could constitute process knowledge include calculations based on material balances and process stoichiometry. Previous test results may be used provided the results are still relevant to the current batch process vent conditions. Performance tests shall follow the procedures specified in paragraphs (b)(5)(i) through (b)(5)(iii) of this section. The procedures in either paragraph (b)(5)(iv) or (b)(5)(v) of this section shall be used to calculate the emissions per batch emission episode.

* * * * *

(ii) Annual average batch vent flow rate shall be determined as specified in paragraph (e) of this section.

(iii) Method 18 or Method 25A, 40 CFR part 60, appendix A, shall be used to determine the concentration of TOC or organic HAP, as appropriate. Alternatively, any other method or data that has been validated according to the applicable procedures in Method 301 of appendix A of this part may be used. The use of Method 25A, 40 CFR part 60, appendix A shall conform with the requirements in paragraphs (b)(5)(iii)(A) and (b)(5)(iii)(B) of this section.

* * * * *

(iv) If an integrated sample is taken over the entire batch emission episode to determine the average batch vent concentration of TOC or total organic HAP, emissions shall be calculated using Equation 9 of this subpart.

$$E_{episode} = K \left[\sum_{j=1}^{n} (C_j)(M_j) \right] AFR\ (T_h) \quad \text{[Eq. 9]}$$

Where:

$E_{episode}$ = Emissions, kg/episode.

K = Constant, 2.494×10^{-6} $(ppmv)^{-1}$ (gm-mole/scm) (kg/gm) (min/hr), where standard temperature is 20 °C.

C_j = Average batch vent concentration of TOC or sample organic HAP component j of the gas stream, dry basis, ppmv.

M_j = Molecular weight of TOC or sample organic HAP component j of the gas stream, gm/gm-mole.

AFR = Average batch vent flow rate of gas stream, dry basis, scmm.

T_h = Hours/episode

n = Number of organic HAP in stream. Note: Summation not applicable if TOC emissions are being estimated using a TOC concentration measured using Method 25A, 40 CFR part 60, appendix A.

(v) If grab samples are taken to determine the average batch vent concentration of TOC or total organic HAP, emissions shall be calculated according to paragraphs (b)(5)(v)(A) and (b)(5)(v)(B) of this section.

(A) For each measurement point, the emission rate shall be calculated using Equation 10 of this subpart.

$$E_{point} = K\left[\sum_{j=1}^{n} C_j M_j\right]FR \qquad \text{[Eq. 10]}$$

Where:

E_{point} = Emission rate for individual measurement point, kg/hr.

K = Constant, 2.494×10^{-6} $(ppmv)^{-1}$ (gm-mole/scm) (kg/gm) (min/hr), where standard temperature is 20 °C.

C_j = Concentration of TOC or sample organic HAP component j of the gas stream, dry basis, ppmv.

M_j = Molecular weight of TOC or sample organic HAP component j of the gas stream, gm/gm-mole.

FR = Flow rate of gas stream for the measurement point, dry basis, scmm.

n = Number of organic HAP in stream. Note: Summation not applicable if TOC emissions are being estimated using a TOC concentration measured using Method 25A, 40 CFR part 60, appendix A.

* * * * *

(6) Engineering assessment may be used to estimate emissions from a batch emission episode, if the criteria in paragraph (b)(6)(i) are met. Data or other information used to demonstrate that the criteria in paragraph (b)(6)(i) of this section have been met shall be reported as specified in paragraph (b)(6)(iii) of this section. Paragraph (b)(6)(ii) of this section defines engineering assessment, for the purposes of estimating emissions from a batch emissions episode. All data, assumptions, and procedures used in an engineering assessment shall be documented.

(i) If the criteria specified in paragraph (b)(6)(i)(A), (B), or (C) are met for a specific batch emission episode, the owner or operator may use engineering assessment, as described in paragraph (b)(6)(ii) of this section, to estimate emissions from that batch emission episode, and the owner or operator is not required to use the emissions estimation equations described in paragraphs (b)(1) through (b)(4) of this section to estimate emissions from that batch emission episode.

(A) Previous test data, where the measurement of organic HAP or TOC emissions was an outcome of the test, show a greater than 20 percent discrepancy between the test value and the value estimated using the applicable equations in paragraphs (b)(1) through (b)(4) of this section. Paragraphs (b)(6)(i)(A)(*1*) and (*2*) of this section describe test data that will be acceptable under this paragraph (b)(6)(i)(A).

(*1*) Test data for the batch emission episode obtained during production of the product for which the demonstration is being made.

(*2*) Test data obtained for a batch emission episode from another process train, where the test data were obtained during production of the product for which the demonstration is being made. Test data from another process train may be used only if the owner or operator can demonstrate that the data are representative of the batch emission episode for which the demonstration is being made, taking into account the nature, size, operating conditions, production rate, and sequence of process steps (*e.g.,* reaction, distillation, etc.) of the equipment in the other process train.

(B) Previous test data obtained during the production of the product for which the demonstration is being made, for the batch emission episode with the highest organic HAP emissions on a mass basis, show a greater than 20 percent discrepancy between the test value and the value estimated using the applicable equations in paragraphs (b)(1) through (b)(4) of this section. If the criteria in this paragraph (b)(6)(i)(B) are met, then engineering assessment may be used for all batch emission episodes associated with that batch cycle for the batch unit operation.

(C) The owner or operator has requested and been granted approval to use engineering assessment to estimate emissions from a batch emissions episode. The request to use engineering assessment to estimate emissions from a batch emissions episode shall contain sufficient information and data to demonstrate to the Administrator that engineering assessment is an accurate means of estimating emissions for that particular batch emissions episode. The request to use engineering assessment to estimate emissions for a batch emissions episode shall be submitted in the Precompliance Report required under § 63.506(e)(3).

(ii) Engineering assessment includes, but is not limited to, the following:

(A) Previous test results, provided the tests are representative of current operating practices;

(B) Bench-scale or pilot-scale test data obtained under conditions representative of current process operating conditions;

(C) Flow rate, TOC emission rate, or organic HAP emission rate specified or implied within a permit limit applicable to the batch process vent; and

(D) Design analysis based on accepted chemical engineering principles, measurable process parameters, or physical or chemical laws or properties. Examples of analytical methods include, but are not limited to:

(*1*) Use of material balances;

(*2*) Estimation of flow rate based on physical equipment design such as pump or blower capacities;

(*3*) Estimation of TOC or organic HAP concentrations based on saturation conditions; and

(*4*) Estimation of TOC or organic HAP concentrations based on grab samples of the liquid or vapor.

(iii) Data or other information used to demonstrate that the criteria in paragraph (b)(6)(i) of this section have been met shall be reported as specified in paragraphs (b)(6)(iii)(A) and (b)(6)(iii)(B) of this section.

(A) Data or other information used to demonstrate that the criteria in paragraph (b)(6)(i)(A) or (b)(6)(i)(B) of this section have been met shall be reported in the Notification of Compliance Status, as required in § 63.1327(a)(6).

(B) The request for approval to use engineering assessment to estimate emissions from a batch emissions episode as allowed under paragraph (b)(6)(i)(C) of this section, and sufficient data or other information for demonstrating to the Administrator that engineering assessment is an accurate means of estimating emissions for that particular batch emissions episode shall be submitted with the Precompliance Report, as required in § 63.1335(e)(3).

* * * * *

(9) Individual HAP partial pressures in multicomponent systems shall be determined using the appropriate method specified in paragraphs (b)(9)(i) through (b)(9)(iii) of this section.

(i) If the components are miscible, use Raoult's law to calculate the partial pressures;

(ii) If the solution is a dilute aqueous mixture, use Henry's law constants to calculate partial pressures;

(iii) If Raoult's law or Henry's law are not appropriate or available, the owner or operator may use any of the options in paragraphs (b)(9)(iii)(A), (B), or (C) of this section.

(A) Experimentally obtained activity coefficients, Henry's law constants, or solubility data;

(B) Models, such as group-contribution models, to predict activity coefficients; or

(C) Assume the components of the system behave independently and use the summation of all vapor pressures from the HAPs as the total HAP partial pressure.

* * * * *

(d) *Minimum emission level exemption.* A batch process vent with annual emissions of TOC or organic HAP less than 11,800 kg/yr is considered a Group 2 batch process vent and the owner or operator of said batch process vent shall comply with the requirements in § 63.1322(f) or (g). Annual emissions of TOC or organic HAP are determined at the exit of the batch unit operation, as described in paragraph (a)(2) of this section, and are determined as specified in paragraph (b) of this section. The owner or operator of said batch process vent is not required to comply with the provisions in paragraphs (e) through (g) of this section.

(e) *Determination of average batch vent flow rate and annual average batch vent flow rate.* The owner or operator shall determine the average batch vent flow rate for each batch emission episode in accordance with one of the procedures provided in paragraphs (e)(1) through (e)(2) of this section. The annual average batch vent flow rate for a batch process vent shall be calculated as specified in paragraph (e)(3) of this section.

(1) Determination of the average batch vent flow rate for a batch emission episode by direct measurement shall be made using the procedures specified in paragraphs (e)(1)(i) through (e)(1)(iii) of this section.

(i) The volumetric flow rate (FR_i) for a batch emission episode, in standard cubic meters per minute (scmm) at 20°C, shall be determined using Method 2, 2A, 2C, or 2D, 40 CFR part 60, appendix A, as appropriate.

* * * * *

(iii) The average batch vent flow rate for a batch emission episode shall be calculated using Equation 14 of this subpart.

$$AFR_{episode} = \frac{\sum_{i=1}^{n} FR_i}{n} \qquad \text{[Eq. 14]}$$

Where:

$AFR_{episode}$ = Average batch vent flow rate for the batch emission episode, scmm.

FR_i = Flow rate for individual measurement i, scmm.

n = Number of flow rate measurements taken during the batch emission episode.

(2) The average batch vent flow rate for a batch emission episode may be determined by engineering assessment, as defined in paragraph (b)(6)(i) of this section. All data, assumptions, and procedures used shall be documented.

(3) The annual average batch vent flow rate for a batch process vent shall be calculated using Equation 15 of this subpart.

$$AFR = \frac{\sum_{i=1}^{n} (DUR_i)(AFR_{episode,\,i})}{\sum_{i=1}^{n} (DUR_i)} \qquad \text{[Eq. 15]}$$

Where:

AFR = Annual average batch vent flow rate for the batch process vent, scmm.

DUR_i = Duration of type i batch emission episodes annually, hrs/yr.

$AFR_{episode,i}$ = Average batch vent flow rate for type i batch emission episode, scmm.

n = Number of types of batch emission episodes venting from the batch process vent.

* * * * *

(g) *Group 1/Group 2 status determination.* The owner or operator shall compare the cutoff flow rate, calculated in accordance with paragraph (f) of this section, with the annual average batch vent flow rate, determined in accordance with paragraph (e)(3) of this section. The group determination status for each batch process vent shall be made using the criteria specified in paragraphs (g)(1) and (g)(2) of this section.

(1) If the cutoff flow rate is greater than or equal to the annual average batch vent flow rate of the stream, the batch process vent is classified as a Group 1 batch process vent.

(2) If the cutoff flow rate is less than the annual average batch vent flow rate of the stream, the batch process vent is classified as a Group 2 batch process vent.

(h) * * *

(1) * * *

(iii) Average concentration of organic compounds containing halogens and hydrogen halides as measured by Method 26 or 26A, 40 CFR part 60, appendix A.

* * * * *

(2) The annual mass emissions of halogen atoms for a batch process vent shall be calculated using Equation 17 of this subpart.

$$E_{halogen} = K\left[\sum_{j=1}^{n}\sum_{i=1}^{m}\left(C_{avg_j}\right)\left(L_{j,i}\right)\left(M_{j,i}\right)\right]AFR \qquad \text{[Eq. 17]}$$

Where:

$E_{halogen}$ = Mass of halogen atoms, dry basis, kg/yr.

K = Constant, 0.022 $(ppmv)^{-1}$ (kg-mole per scm) (minute/yr), where standard temperature is 20 °C.

AFR = Annual average batch vent flow rate of the batch process vent, determined according to paragraph (e) of this section, scmm.

$M_{j,i}$ = Molecular weight of halogen atom i in compound j, kg/kg-mole.

$L_{j,i}$ = Number of atoms of halogen i in compound j.

n = Number of halogenated compounds j in the batch process vent.

m = Number of different halogens i in each compound j of the batch process vent.

C_{avg_j} = Annual average batch vent concentration of halogenated compound j in the batch process vent as determined by using Equation 18 of this subpart, dry basis, ppmv.

$$C_{avg_j} = \frac{\sum_{i=1}^{n}(DUR_i)(C_i)}{\sum_{i=1}^{n}(DUR_i)} \qquad \text{[Eq. 18]}$$

Where:

DUR_i = Duration of type i batch emission episodes annually, hrs/yr.

C_i = Average batch vent concentration of halogenated compound j in type i batch emission episode, ppmv.

n = Number of types of batch emission episodes venting from the batch process vent.

* * * * *

(i) *Process changes affecting Group 2 batch process vents.* Whenever process changes, as described in paragraph (i)(1) of this section, are made that affect one or more Group 2 batch process vents and that could reasonably be expected to change one or more Group 2 batch process vents to Group 1 batch process vents or that could reasonably be expected to reduce the batch mass input limitation for one or more Group 2 batch process vents, the owner or operator shall comply with paragraphs (i)(2) and (3) of this section.

(1) Examples of process changes include the changes listed in paragraphs (i)(1)(i), (i)(1)(ii), and (i)(1)(iii) of this section.

(i) For all batch process vents, examples of process changes include, but are not limited to, changes in feedstock type or catalyst type; or whenever there is replacement, removal, or modification of recovery equipment considered part of the batch unit operation as specified in paragraph (a)(2) of this section; or increases in production capacity or production rate. For purposes of this paragraph (i), process changes do not include: Process upsets; unintentional, temporary process changes; and changes that are within the margin of variation on which the original group determination was based.

(ii) For Group 2 batch process vents where the group determination and batch mass input limitation are based on the expected mix of products, the situations described in paragraphs (i)(1)(ii)(A) and (B) of this section shall be considered to be process changes.

(A) The production of combinations of products not considered in establishing the batch mass input limitation.

(B) The production of a recipe of a product with a total mass of HAP charged to the reactor during the production of a single batch of product that is higher than the total mass of HAP for the recipe used as the single highest-HAP recipe for that product in the batch mass input limitation determination.

(iii) For Group 2 batch process vents where the group determination and batch mass input limitation are based on the single highest-HAP recipe (considering all products produced or processed in the batch unit operation), the production of a recipe having a total mass of HAP charged to the reactor (during the production of a single batch of product) that is higher than the total mass of HAP for the highest-HAP recipe used in the batch mass input limitation determination shall be considered to be a process change.

(2) For each batch process vent affected by a process change, the owner or operator shall redetermine the group status by repeating the procedures specified in paragraphs (b) through (g) of this section, as applicable; alternatively, engineering assessment, as described in paragraph (b)(6)(i) of this section, may be used to determine the effects of the process change.

(3) Based on the results from paragraph (i)(2) of this section, owners or operators of affected sources shall comply with either paragraph (i)(3)(i), (ii), or (iii) of this section.

(i) If the group redetermination described in paragraph (i)(2) of this section indicates that a Group 2 batch process vent has become a Group 1 batch process vent as a result of the process change, the owner or operator shall submit a report as specified in § 63.1327(b) and shall comply with the Group 1 provisions in §§ 63.1322 through 63.1327 in accordance with § 63.1310(i)(2)(ii) or (i)(2)(iii), as applicable.

(ii) If the redetermination described in paragraph (i)(2) of this section indicates that a Group 2 batch process vent with annual emissions less than the level specified in paragraph (d) of this section, that is in compliance with § 63.1322(g), now has annual emissions greater than or equal to the level specified in paragraph (d) of this section but remains a Group 2 batch process vent, the owner or operator shall comply with the provisions in paragraphs (i)(3)(ii)(A) through (C) of this section.

(A) Redetermine the batch mass input limitation;

(B) Submit a report as specified in § 63.1327(c); and

(C) Comply with § 63.1322(f), beginning with the year following the submittal of the report submitted according to paragraph (i)(3)(ii)(B) of this section.

(iii) If the group redetermination described in paragraph (i)(2) of this section indicates no change in group status or no change in the relation of annual emissions to the levels specified in paragraph (d) of this section, the owner or operator shall comply with paragraphs (i)(3)(iii)(A) and (i)(3)(iii)(B) of this section.

(A) The owner or operator shall redetermine the batch mass input limitation; and

(B) The owner or operator shall submit the new batch mass input limitation in accordance with § 63.1327(c).

(j) *Process changes to new SAN affected sources using a batch process.* Whenever process changes, as described in paragraph (j)(1) of this section, are made to a new affected source producing SAN using a batch process that could reasonably be expected to adversely impact the compliance status (*i.e.,* achievement of 84 percent emission reduction) of the affected source, the owner or operator shall comply with paragraphs (j)(2) and (3) of this section.

* * * * *

(3) Where the redetermined percent reduction is less than 84 percent, the owner or operator of the affected source shall submit a report as specified in § 63.1327(d) and shall comply with § 63.1322(a)(3) and all associated provisions in accordance with § 63.1310(i).

43. Section 63.1324 is amended by:

a. Revising the section title;

b. Revising paragraph (a) introductory text;

c. Revising paragraph (a)(2);

d. Revising paragraph (c) introductory text;

e. Revising paragraph (c)(4)(ii);

f. Revising paragraph (c)(7);

g. Revising paragraph (d) introductory text;

h. Revising paragraph (e) introductory text;

i. Revising paragraph (e)(2);

j. Revising paragraph (f)(1) introductory text;

k. Revising paragraph (f)(1)(ii);

l. Revising paragraph (f)(3); and

m. Removing paragraph (e)(3).

The revisions read as follows:

§ 63.1324 Batch process vents—monitoring equipment.

(a) *General requirements.* Each owner or operator of a batch process vent or aggregate batch vent stream that uses a control device to comply with the requirements in § 63.1322(a) or

§ 63.1322(b), shall install the monitoring equipment specified in paragraph (c) of this section. All monitoring equipment shall be installed, calibrated, maintained, and operated according to manufacturer's specifications or other written procedures that provide adequate assurance that the equipment would reasonably be expected to monitor accurately.

* * * * *

(2) Except as otherwise provided in this subpart, the owner or operator shall operate control devices such that the daily average of monitored parameters, established as specified in paragraph (f) of this section, remains above the minimum level or below the maximum level, as appropriate.

* * * * *

(c) *Batch process vent and aggregate batch vent stream monitoring equipment.* The monitoring equipment specified in paragraphs (c)(1) through (c)(8) of this section shall be installed as specified in paragraph (a) of this section. The parameters to be monitored are specified in Table 7 of this subpart.

* * * * *

(4) * * *

(ii) A flow measurement device equipped with a continuous recorder shall be located at the scrubber influent for liquid flow. Gas stream flow shall be determined using one of the procedures specified in paragraphs (c)(4)(ii)(A) through (c)(4)(ii)(C) of this section.

(A) The owner or operator may determine gas stream flow using the design blower capacity, with appropriate adjustments for pressure drop.

(B) If the scrubber is subject to regulations in 40 CFR parts 264 through 266 that have required a determination of the liquid to gas (L/G) ratio prior to the applicable compliance date for this subpart, the owner or operator may determine gas stream flow by the method that had been utilized to comply with those regulations. A determination that was conducted prior to the compliance date for this subpart may be utilized to comply with this subpart if it is still representative.

(C) The owner or operator may prepare and implement a gas stream flow determination plan that documents an appropriate method which will be used to determine the gas stream flow. The plan shall require determination of gas stream flow by a method which will at least provide a value for either a representative or the highest gas stream flow anticipated in the scrubber during representative operating conditions other than start-ups, shutdowns, or malfunctions. The plan shall include a description of the methodology to be followed and an explanation of how the selected methodology will reliably determine the gas stream flow, and a description of the records that will be maintained to document the determination of gas stream flow. The owner or operator shall maintain the plan as specified in § 63.1335(a).

* * * * *

(7) Where a carbon adsorber is used, an integrating regeneration steam flow or nitrogen flow, or pressure monitoring device having an accuracy of ±10 percent of the flow rate, level, or pressure, or better, capable of recording the total regeneration steam flow or nitrogen flow, or pressure (gauge or absolute) for each regeneration cycle; and a carbon bed temperature monitoring device, capable of recording the carbon bed temperature after each regeneration and within 15 minutes of completing any cooling cycle are required.

* * * * *

(d) *Alternative monitoring parameters.* An owner or operator of a batch process vent or aggregate batch vent stream may request approval to monitor parameters other than those required by paragraph (c) of this section. The request shall be submitted according to the procedures specified in § 63.1327(f) and § 63.1335(f). Approval shall be requested if the owner or operator:

* * * * *

(e) *Monitoring of bypass lines.* Owners or operators of a batch process vent or aggregate batch vent stream using a vent system that contains bypass lines that could divert emissions away from a control device used to comply with § 63.1322(a) or § 63.1322(b) shall comply with either paragraph (e)(1) or (e)(2) of this section. Equipment such as low leg drains, high point bleeds, analyzer vents, open-ended valves or lines, and pressure relief valves needed for safety purposes are not subject to this paragraph (e).

* * * * *

(2) Secure the bypass line damper or valve in the non-diverting position with a car-seal or a lock-and-key type configuration. A visual inspection of the seal or closure mechanism shall be performed at least once every month to ensure that the damper or valve is maintained in the non-diverting position and emissions are not diverted through the bypass line. Records shall be generated as specified in § 63.1326(e)(4).

(f)* * *

(1) For each parameter monitored under paragraph (c) or (d) of this section, the owner or operator shall establish a level, defined as either a maximum or minimum operating parameter as denoted in Table 8 of this subpart, that indicates proper operation of the control device. The level shall be established in accordance with the procedures specified in § 63.1334. The level may be based upon a prior performance test conducted for determining compliance with a regulation promulgated by EPA, and the owner or operator is not required to conduct a performance test under § 63.1325, provided that the prior performance test meets the conditions of § 63.1325(b)(3).

* * * * *

(ii) For aggregate batch vent streams using a control device to comply with § 63.1322(b)(2), the established level shall reflect the applicable emission reduction requirement specified in § 63.1322(b)(2).

* * * * *

(3) The operating day shall be defined as part of establishing the parameter monitoring level and shall be submitted with the information in paragraph (f)(2) of this section. The definition of operating day shall specify the time(s) at which an operating day begins and ends. The operating day shall not exceed 24 hours.

* * * * *

44. Section 63.1325 is amended by:

a. Revising paragraph (a);

b. Revising paragraph (b) introductory text;

c. Revising paragraph (b)(3);

d. Revising paragraph (b)(5);

e. Revising paragraph (c) introductory text;

f. Revising paragraph (c)(1)(i)(A);

g. Revising paragraph (c)(1)(i)(B) introductory text;

h. Revising paragraph (c)(1)(i)(C);

i. Revising paragraph (c)(1)(i)(D) introductory text;

j. Revising paragraph (c)(1)(ii);

k. Revising paragraph (c)(1)(iii) introductory text;

l. Revising paragraph (c)(1)(iii)(A);

m. Revising paragraph (c)(1)(v);

n. Revising paragraph (c)(2) introductory text;

o. Revising paragraph (d)(1);

p. Revising paragraph (d)(2)(ii);

q. Revising paragraphs (d)(3) and (d)(4);

r. Revising paragraph (e);

s. Revising paragraph (g); and

t. Removing paragraph (b)(6).

The revisions read as follows:

§ 63.1325 Batch process vents—performance test methods and procedures to determine compliance.

(a) *Use of a flare.* When a flare is used to comply with § 63.1322(a)(1),

§ 63.1322(a)(3), § 63.1322(b)(1), or § 63.1322(b)(3), the owner or operator of an affected source shall comply with § 63.1333(e).

(b) *Exceptions to performance tests.* An owner or operator is not required to conduct a performance test when a control device specified in paragraphs (b)(1) through (b)(5) of this section is used to comply with § 63.1322(a)(2) or (a)(3).

* * * * *

(3) A control device for which a performance test was conducted for determining compliance with a regulation promulgated by the EPA and the test was conducted using the same Methods specified in this section and either no deliberate process changes have been made since the test, or the owner or operator can demonstrate that the results of the performance test, with or without adjustments, reliably demonstrate compliance despite process changes. Recovery devices used for controlling emissions from continuous process vents complying with § 63.1322(a)(3) are also eligible for the exemption described in this paragraph (b)(3).

* * * * *

(5) A hazardous waste incinerator for which the owner or operator has been issued a final permit under 40 CFR part 270 and complies with the requirements of 40 CFR part 264, subpart O, or has certified compliance with the interim status requirements of 40 CFR part 265, subpart O.

(c) *Batch process vent testing and procedures for compliance with § 63.1322(a)(2).* Except as provided in paragraph (a) or (b) of this section, an owner or operator using a control device to comply with § 63.1322(a)(2) shall conduct a performance test using the procedures specified in paragraph (c)(1) of this section in order to determine the control efficiency of the control device. An owner or operator shall determine the percent reduction for the batch cycle using the control efficiency of the control device as specified in paragraphs (c)(2)(i) through (c)(2)(iii) of this section and the procedures specified in paragraph (c)(2) of this section. Compliance may be based on either total organic HAP or TOC. For purposes of this paragraph (c), the term ''batch emission episode'' shall have the meaning ''period of the batch emission episode selected for control,'' which may be the entire batch emission episode or may only be a portion of the batch emission episode.

(1)* * *

(i) * * *

(A) Alternatively, an owner or operator may choose to test only those periods of the batch emission episode during which the emission rate for the entire episode can be determined or during which the emissions are greater than the average emission rate of the batch emission episode. The owner or operator choosing either of these options shall develop an emission profile for the entire batch emission episode, based on either process knowledge or test data collected, to demonstrate that test periods are representative. Examples of information that could constitute process knowledge include calculations based on material balances and process stoichiometry. Previous test results may be used provided the results are still relevant to the current batch process vent conditions.

(B) Method 1 or 1A, 40 CFR part 60, appendix A, as appropriate, shall be used for selection of the sampling sites if the flow measuring device is a pitot tube, except that references to particulate matter in Method 1A do not apply for the purposes of this subpart. No traverse is necessary when Method 2A or 2D, 40 CFR part 60, appendix A is used to determine gas stream volumetric flow rate. Inlet sampling sites shall be located as specified in paragraphs (c)(1)(i)(B)(*1*) and (c)(1)(i)(B)(*2*) of this section. Outlet sampling sites shall be located at the outlet of the control device prior to release to the atmosphere.

* * * * *

(C) Gas stream volumetric flow rate and/or average batch vent flow rate shall be determined as specified in § 63.1323(e).

(D) Method 18 or Method 25A, 40 CFR part 60, appendix A shall be used to determine the concentration of organic HAP or TOC, as appropriate. Alternatively, any other method or data that has been validated according to the applicable procedures in Method 301 of appendix A of this part may be used. The use of Method 25A, 40 CFR part 60, appendix A shall conform with the requirements in paragraphs (c)(1)(i)(D)(*1*) and (c)(1)(i)(D)(*2*) of this section.

* * * * *

(ii) If an integrated sample is taken over the entire test period to determine average batch vent concentration of TOC or total organic HAP, emissions per batch emission episode shall be calculated using Equations 19 and 20 of this subpart.

$$E_{episode,inlet} = K\left[\sum_{j=1}^{n}\left(C_{j,inlet}\right)\left(M_j\right)\right]\left(AFR_{inlet}\right)\left(T_h\right) \qquad \text{[Eq. 19]}$$

$$E_{episode,outlet} = K\left[\sum_{j=1}^{n}\left(C_{j,outlet}\right)\left(M_j\right)\right]\left(AFR_{outlet}\right)\left(T_h\right) \qquad \text{[Eq. 20]}$$

Where:

$E_{episode}$=Inlet or outlet emissions, kg/episode.

K=Constant, 2.494×10^{-6} $(ppmv)^{-1}$ (gm-mole/scm) (kg/gm) (min/hr), where standard temperature is 20 °C.

C_j=Average inlet or outlet concentration of TOC or sample organic HAP component j of the gas stream for the batch emission episode, dry basis, ppmv.

M_j=Molecular weight of TOC or sample organic HAP component j of the gas stream, gm/gm-mole.

AFR = Average inlet or outlet flow rate of gas stream for the batch emission episode, dry basis, scmm.

T_h=Hours/episode.

n=Number of organic HAP in stream. Note: Summation is not applicable if TOC emissions are being estimated using a TOC concentration measured using Method 25A, 40 CFR part 60, appendix A.

(iii) If grab samples are taken to determine average batch vent concentration of TOC or total organic HAP, emissions shall be calculated according to paragraphs (c)(1)(iii)(A) and (B) of this section.

(A) For each measurement point, the emission rates shall be calculated using Equations 21 and 22 of this subpart.

$$E_{point,inlet} = K\left[\sum_{j=1}^{n} C_j M_j\right] FR_{inlet} \qquad [Eq. 21]$$

$$E_{point,outlet} = K\left[\sum_{j=1}^{n} C_j M_j\right] FR_{outlet} \qquad [Eq. 22]$$

Where:

E_{point}=Inlet or outlet emission rate for the measurement point, kg/hr.

K=Constant, 2.494×10^{-6} (ppmv)$^{-1}$ (gm-mole/scm) (kg/gm) (min/hr), where standard temperature is 20 minus;oC.

C_j=Inlet or outlet concentration of TOC or sample organic HAP component j of the gas stream, dry basis, ppmv.

M_j=Molecular weight of TOC or sample organic HAP component j of the gas stream, gm/gm-mole.

FR=Inlet or outlet flow rate of gas stream for the measurement point, dry basis, scmm.

n=Number of organic HAP in stream.

Note: Summation is not applicable if TOC emissions are being estimated using a TOC concentration measured using Method 25A, 40 CFR part 60, appendix A.

* * * * *

(v) If the batch process vent entering a boiler or process heater with a design capacity less than 44 megawatts is introduced with the combustion air or as a secondary fuel, the weight-percent reduction of total organic HAP or TOC across the device shall be determined by comparing the TOC or total organic HAP in all combusted batch process vents and primary and secondary fuels with the TOC or total organic HAP, respectively, exiting the combustion device.

(2) The percent reduction for the batch cycle shall be determined using Equation 26 of this subpart and the control device efficiencies specified in paragraphs (c)(2)(i) through (c)(2)(iii) of this section. All information used to calculate the batch cycle percent reduction, including a definition of the batch cycle identifying all batch emission episodes, shall be recorded as specified in § 63.1326(b)(2). This information shall include identification of those batch emission episodes, or portions thereof, selected for control.

$$PR = \frac{\sum_{i=1}^{n} E_{unc} + \sum_{i=1}^{n} E_{inlet,con} - \sum_{i=1}^{n} (1-R) E_{inlet,con}}{\sum_{i=1}^{n} E_{unc} + \sum_{i=1}^{n} E_{inlet,con}} (100) \qquad [Eq. 26]$$

Where:

PR = Percent reduction

E_{unc} = Mass rate of TOC or total organic HAP for uncontrolled batch emission episode i, kg/hr.

$E_{inlet,con}$ = Mass rate of TOC or total organic HAP for controlled batch emission episode i at the inlet to the control device, kg/hr.

R = Control efficiency of control device as specified in paragraphs (c)(2)(i) through (c)(2)(iii) of this section.

n = Number of uncontrolled batch emission episodes, controlled batch emission episodes, and control devices. The value of n is not necessarily the same for these three items.

* * * * *

(d) * * *

(1) Sampling sites shall be located at the inlet and outlet of the scrubber or other halogen reduction device used to reduce halogen emissions in complying with § 63.1322(c)(1) or at the outlet of the halogen reduction device used to reduce halogen emissions in complying with § 63.1322(c)(2).

(2) * * *

(ii) Gas stream volumetric flow rate and/or average batch vent flow rate shall be determined as specified in § 63.1323(e).

(3) To determine compliance with the percent reduction specified in § 63.1322(c)(1), the mass emissions for any hydrogen halides and halogens present at the inlet of the scrubber or other halogen reduction device shall be summed together. The mass emissions of any hydrogen halides or halogens present at the outlet of the scrubber or other halogen reduction device shall be summed together. Percent reduction shall be determined by subtracting the outlet mass emissions from the inlet mass emissions and then dividing the result by the inlet mass emissions and multiplying by 100.

(4) To determine compliance with the emission limit specified in § 63.1322(c)(2), the annual mass emissions for any hydrogen halides and halogens present at the outlet of the halogen reduction device and prior to any combustion device shall be summed together and compared to the emission limit specified in § 63.1322(c)(2).

* * * * *

(e) *Aggregate batch vent stream testing for compliance with § 63.1322(b)(2) or (b)(3).* Except as specified in paragraphs (e)(1) through (e)(3) of this section, owners or operators of aggregate batch vent streams complying with § 63.1322(b)(2) or (b)(3) shall conduct a performance test using the performance testing procedures for continuous process vents in § 63.116(c).

(1) For purposes of this subpart, when the provisions of § 63.116(c) specify that Method 18, 40 CFR part 60, appendix A, shall be used, Method 18 or Method 25A, 40 CFR part 60, appendix A, may be used. The use of Method 25A, 40

CFR part 60, appendix A, shall conform with the requirements in paragraphs (e)(1)(i) and (e)(1)(ii) of this section.

(i) The organic HAP used as the calibration gas for Method 25A, 40 CFR part 60, appendix A, shall be the single organic HAP representing the largest percent by volume of the emissions.

(ii) The use of Method 25A, 40 CFR part 60, appendix A, is acceptable if the response from the high-level calibration gas is at least 20 times the standard deviation of the response from the zero calibration gas when the instrument is zeroed on the most sensitive scale.

(2) When § 63.116(c)(4) refers to complying with an emission reduction of 98 percent, for purposes of this subpart, the 90 percent reduction requirement specified in § 63.1322(b)(2) shall apply.

* * * * *

(g) *Batch mass input limitation.* The batch mass input limitation required by § 63.1322(g)(1) shall be determined by the owner or operator such that annual emissions for the batch process vent remain less than the level specified in § 63.1323(d). The batch mass input limitation required by § 63.1322(f)(1) shall be determined by the owner or operator such that annual emissions remain at a level that ensures that said batch process vent remains a Group 2 batch process vent, given the actual annual flow rate for said batch process vent determined according to the procedures specified in § 63.1323(e)(3). The batch mass input limitation shall be determined using the same basis, as described in § 63.1323(a)(1), used to make the group determination (*i.e.*, expected mix of products or highest-HAP recipe.) The establishment of the batch mass input limitation is not dependent upon any past production or activity level.

(1) If the expected mix of products serves as the basis for the batch mass input limitation, the batch mass input limitation shall be determined based on any foreseeable combination of products that the owner or operator expects to manufacture.

(2) If the single highest-HAP recipe serves as the basis for the batch mass input limitation, the batch mass input limitation shall be determined based solely on the production of the single highest-HAP recipe, considering all products produced or processed in the batch unit operation.

45. Section 63.1326 is amended by:

a. Revising paragraph (a) introductory text;

b. Revising paragraphs (a)(1) and (a)(2);

c. Revising paragraph (a)(3)(i);

d. Revising paragraph (a)(4);

e. Revising paragraphs (a)(7) through (a)(9);

f. Revising paragraph (b) introductory text;

g. Revising paragraph (b)(2);

h. Revising paragraphs (b)(3)(ii) and (b)(3)(iii);

i. Revising paragraph (b)(4)(iv);

j. Revising paragraphs (d)(1) and (d)(2);

k. Revising paragraph (e) introductory text;

l. Revising paragraphs (e)(1)(i) and (e)(1)(ii);

m. Revising paragraph (e)(2) introductory text;

n. Revising paragraph (e)(2)(ii);

o. Revising paragraph (e)(4);

p. Revising paragraph (f); and

q. Adding paragraph (g).

The revisions and additions read as follows:

§ 63.1326 Batch process vents—recordkeeping provisions.

(a) *Group determination records for batch process vents.* Except as provided in paragraphs (a)(7) and (a)(8) of this section, each owner or operator of an affected source shall maintain the records specified in paragraphs (a)(1) through (a)(6) of this section for each batch process vent subject to the group determination procedures of § 63.1323. Except for paragraph (a)(1) of this section, the records required by this paragraph (a) are restricted to the information developed and used to make the group determination under §§ 63.1323(b) through 63.1323(g), as appropriate. If an owner or operator did not need to develop certain information (*e.g.*, annual average batch vent flow rate) to determine the group status, this paragraph (a) does not require that additional information be developed. Paragraph (a)(9) of this section specifies the recordkeeping requirements for Group 2 batch process vents that are exempt from the batch mass input limitation provisions, as allowed under § 63.1322(h).

(1) An identification of each unique product that has emissions from one or more batch emission episodes venting from the batch process vent, along with an identification of the single highest-HAP recipe for each product and the mass of HAP fed to the reactor for that recipe.

(2) A description of, and an emission estimate for, each batch emission episode, and the total emissions associated with one batch cycle, as described in either paragraph (a)(2)(i) or (a)(2)(ii) of this section, as appropriate.

(i) If the group determination is based on the expected mix of products, records shall include the emission estimates for the single highest-HAP recipe of each unique product identified in paragraph (a)(1) of this section that was considered in making the group determination under § 63.1323.

(ii) If the group determination is based on the single highest-HAP recipe (considering all products produced or processed in the batch unit operation), records shall include the emission estimates for the single highest-HAP recipe.

(3) * * *

(i) For Group 2 batch process vents, said emissions shall be determined at the batch mass input limitation.

* * * * *

(4) The annual average batch vent flow rate for the batch process vent, determined in accordance with § 63.1323(e).

* * * * *

(7) If a batch process vent is subject to § 63.1322(a) or (b), none of the records in paragraphs (a)(1) through (a)(6) of this section are required.

(8) If the total annual emissions from the batch process vent during the group determination are less than the appropriate level specified in § 63.1323(d), only the records in paragraphs (a)(1) through (a)(3) of this section are required.

(9) For each Group 2 batch process vent that is exempt from the batch mass input limitation provisions because it meets the criteria of § 63.1322(h), the records specified in paragraphs (a)(9)(i) and (ii) shall be maintained.

(i) Documentation of the maximum design capacity of the TPPU; and

(ii) The mass of HAP or material that can be charged annually to the batch unit operation at the maximum design capacity.

(b) *Compliance demonstration records.* Each owner or operator of a batch process vent or aggregate batch vent stream complying with § 63.1322(a) or (b), shall keep the following records, as applicable, readily accessible:

* * * * *

(2) If the owner or operator of a batch process vent has chosen to comply with § 63.1322(a)(2), records documenting the batch cycle percent reduction as specified in § 63.1325(c)(2); and

(3) * * *

(ii) All visible emission readings, heat content determinations, flow rate measurements, and exit velocity determinations made during the compliance determination required by § 63.1333(e); and

(iii) Periods when all pilot flames were absent.

(4) * * *

(iv) For a scrubber or other halogen reduction device following a combustion device to control halogenated batch process vents or halogenated aggregate batch vent streams, the percent reduction of total hydrogen halides and halogens as determined under § 63.1325(d)(3) or the emission limit determined under § 63.1325(d)(4).

* * * * *

(d) * * *

(1) The owner or operator of a Group 2 batch process vent that has chosen to comply with § 63.1322(g) shall keep the following records readily accessible:

(i) Records designating the established batch mass input limitation required by § 63.1322(g)(1) and specified in § 63.1325(g).

(ii) Records specifying the mass of HAP or material charged to the batch unit operation.

(2) The owner or operator of a Group 2 batch process vent that has chosen to comply with § 63.1322(f) shall keep the following records readily accessible:

(i) Records designating the established batch mass input limitation required by § 63.1322(f)(1) and specified in § 63.1325(g).

(ii) Records specifying the mass of HAP or material charged to the batch unit operation.

(e) *Controlled batch process vent continuous compliance records.* Each owner or operator of a batch process vent that has chosen to use a control device to comply with § 63.1322(a) shall keep the following records, as applicable, readily accessible:

(1) * * *

(i) For flares, the records specified in Table 7 of this subpart shall be maintained in place of continuous records.

(ii) For carbon adsorbers, the records specified in Table 7 of this subpart shall be maintained in place of batch cycle daily averages.

(2) Records of the batch cycle daily average value of each continuously monitored parameter, except as provided in paragraph (e)(2)(iii) of this section, as calculated using the procedures specified in paragraphs (e)(2)(i) and (e)(2)(ii) of this section.

* * * * *

(ii) Monitoring data recorded during periods of monitoring system breakdowns, repairs, calibration checks, and zero (low-level) and high-level adjustments shall not be included in computing the batch cycle daily averages. In addition, monitoring data recorded during periods of non-operation of the TPPU (or specific portion thereof) resulting in cessation of organic HAP emissions, or periods of start-up, shutdown, or malfunction shall not be included in computing the batch cycle daily averages.

* * * * *

(4) Where a seal or closure mechanism is used to comply with § 63.1324(e)(2), hourly records of whether a diversion was detected at any time are not required. The owner or operator shall record whether the monthly visual inspection of the seals or closure mechanisms has been done, and shall record the occurrence of all periods when the seal mechanism is broken, the bypass line damper or valve position has changed, or the key for a lock-and-key type configuration has been checked out, and records of any car-seal that has broken.

* * * * *

(f) *Aggregate batch vent stream continuous compliance records.* In addition to the records specified in paragraphs (b) and (c) of this section, each owner or operator of an aggregate batch vent stream using a control device to comply with § 63.1322(b)(1) or (b)(2) shall keep the following records readily accessible:

(1) Continuous records of the equipment operating parameters specified to be monitored under § 63.1324(c) and listed in Table 7 of this subpart, as applicable, or specified by the Administrator in accordance with § 63.1327(f), as allowed under § 63.1324(d), with the exceptions listed in (f)(1)(i) and (f)(1)(ii) of this section.

(i) For flares, the records specified in Table 7 of this subpart shall be maintained in place of continuous records.

(ii) For carbon adsorbers, the records specified in Table 7 of this subpart shall be maintained in place of daily averages.

(2) Records of the daily average value of each continuously monitored parameter for each operating day determined according to the procedures specified in § 63.1335(d).

(3) For demonstrating compliance with the monitoring of bypass lines as specified in § 63.1324(e), records as specified in paragraphs (e)(3) or (e)(4) of this section, as appropriate.

(g) Documentation supporting the establishment of the batch mass input limitation shall include the information specified in paragraphs (g)(1) through (g)(5) of this section, as appropriate.

(1) Identification of whether the purpose of the batch mass input limitation is to comply with § 63.1322(f)(1) or (g)(1).

(2) Identification of whether the batch mass input limitation is based on the single highest–HAP recipe (considering all products) or on the expected mix of products for the batch process vent as allowed under § 63.1323(a)(1).

(3) Definition of the operating year, for the purposes of determining compliance with the batch mass input limitation.

(4) If the batch mass input limitation is based on the expected mix of products, the owner or operator shall provide documentation that describes as many scenarios for differing mixes of products (*i.e.,* how many of each type of product) as the owner or operator desires the flexibility to accomplish. Alternatively, the owner or operator shall provide a description of the relationship among the mix of products that will allow a determination of compliance with the batch mass input limitation under any number of scenarios.

(5) The mass of HAP or material allowed to be charged to the batch unit operation per year under the batch mass input limitation.

46. Section 63.1327 is amended by:

a. Revising paragraph (a) introductory text;

b. Revising paragraph (b);

c. Revising paragraph (c) introductory text;

d. Revising paragraph (c)(2);

e. Revising paragraph (d);

f. Revising paragraph (e);

g. Revising paragraph (g);

h. Removing paragraph (c)(3);

i. Adding paragraph (a)(5); and

j. Adding paragraph (a)(6).

The revisions and additions read as follows:

§ 63.1327 Batch process vents—reporting requirements.

(a) The owner or operator of a batch process vent or aggregate batch vent stream at an affected source shall submit the information specified in paragraphs (a)(1) through (a)(6) of this section, as appropriate, as part of the Notification of Compliance Status specified in § 63.1335(e)(5).

* * * * *

(5) For each Group 2 batch process vent that is exempt from the batch mass input limitation provisions because it meets the criteria of § 63.1322(h), the information specified in § 63.1326(a)(1) through (3), and the information specified in § 63.1326(a)(4) through (6) as applicable, calculated at the conditions specified in § 63.1322(h).

(6) When engineering assessment has been used to estimate emissions from a batch emissions episode and the criteria specified in § 63.1323(b)(6)(i)(A) or (B) have been met, the owner or operator shall submit the information

demonstrating that the criteria specified in § 63.1323(b)(6)(i)(A) or (B) have been met as part of the Notification of Compliance Status required by § 63.1335(e)(5).

(b) Whenever a process change, as defined in § 63.1323(i)(1), is made that causes a Group 2 batch process vent to become a Group 1 batch process vent, the owner or operator shall notify the Administrator and submit a description of the process change within 180 days after the process change is made or with the next Periodic Report, whichever is later. The owner or operator of an affected source shall comply with the Group 1 batch process vent provisions in §§ 63.1321 through 63.1327 in accordance with § 63.480(i)(2)(ii).

(c) Whenever a process change, as defined in § 63.1323(i)(1), is made that causes a Group 2 batch process vent with annual emissions less than the level specified in § 63.1323(d) for which the owner or operator has chosen to comply with § 63.1322(g) to have annual emissions greater than or equal to the level specified in § 63.1323(d) but remains a Group 2 batch process vent, or if a process change is made that requires the owner or operator to redetermine the batch mass input limitation as specified in § 63.1323(i)(3), the owner or operator shall submit a report within 180 days after the process change is made or with the next Periodic Report, whichever is later. The following information shall be submitted:

* * * * *

(2) The batch mass input limitation determined in accordance with § 63.1322(f)(1).

(d) Whenever a process change, as defined in § 63.1323(j)(1), is made that could potentially cause the percent reduction for all process vents at a new SAN affected source using a batch process to be less than 84 percent, the owner or operator shall notify the Administrator and submit a description of the process change within 180 days after the process change is made or with the next Periodic Report, whichever is later. The owner or operator shall comply with § 63.1322(a)(3) and all associated provisions in accordance with § 63.1310(i).

(e) The owner or operator is not required to submit a report of a process change if one of the conditions specified in paragraphs (e)(1) or (e)(2) of this section is met.

(1) The change does not meet the description of a process change in § 63.1323(i) or (j).

(2) The redetermined group status remains Group 2 for an individual batch process vent with annual emissions greater than or equal to the level specified in § 63.1323(d) and the batch mass input limitation does not decrease, a Group 2 batch process vent with annual emissions less than the level specified in § 63.1323(d) complying with § 63.1322(g) continues to have emissions less than the level specified in § 63.1323(d) and the batch mass input limitation does not decrease, or the achieved emission reduction remains at 84 percent or greater for new SAN affected sources using a batch process.

* * * * *

(g) Owners or operators of affected sources complying with § 63.1324(e), shall comply with paragraph (g)(1) or (g)(2) of this section, as appropriate.

(1) Submit reports of the times of all periods recorded under § 63.1326(e)(3) when the batch process vent is diverted from the control device through a bypass line, with the next Periodic Report.

(2) Submit reports of all occurrences recorded under § 63.1326(e)(4) in which the seal mechanism is broken, the bypass line damper or valve position has changed, or the key to unlock the bypass line damper or valve was checked out, with the next Periodic Report.

47. Section 63.1328 is revised to read as follows:

§ 63.1328 Heat exchange systems provisions.

(a) Except as specified in paragraph (b) of this section, each owner or operator of an affected source shall comply with § 63.104, with the differences noted in paragraphs (c) through (h) of this section, for the purposes of this subpart.

(b) The provisions of paragraph (a) of this section do not apply to each process contact cooling tower that is associated with an existing affected source manufacturing PET.

(c) When the term ''chemical manufacturing process unit'' is used in § 63.104, the term ''thermoplastic product process unit'' shall apply for purposes of this subpart, with the exception noted in paragraph (d) of this section.

(d) When the phrase ''a chemical manufacturing process unit meeting the conditions of § 63.100(b)(1) through (b)(3) of this subpart, except for chemical manufacturing process units meeting the condition specified in § 63.100(c) of this subpart'' is used in § 63.104(a), the term ''a TPPU, except for TPPUs meeting the condition specified in § 63.1310(b)'' shall apply for purposes of this subpart.

(e) When § 63.104 refers to Table 4 of subpart F of this part or Table 9 of subpart G of this part, the owner or operator is only required to consider organic HAP listed on Table 6 of this subpart, except for ethylene glycol which need not be considered under this section, for purposes of this subpart.

(f) When § 63.104(c)(3) specifies the monitoring plan retention requirements, and when § 63.104(f)(1) refers to the record retention requirements in § 63.103(c)(1), the requirements in §§ 63.1335(a) and 63.1335(h) shall apply, for purposes of this subpart.

(g) When § 63.104(f)(2) requires information to be reported in the Periodic Reports required by § 63.152(c), the owner or operator shall instead report the information specified in § 63.104(f)(2) in the Periodic Reports required by § 63.1335(e)(6), for the purposes of this subpart.

(h) The compliance date for heat exchange systems subject to the provisions of this section is specified in § 63.1311.

48. Section 63.1329 is amended by:

a. Revising paragraph (a);

b. Revising paragraph (c) introductory text;

c. Revising paragraphs (c)(1)(i) through (c)(1)(iii); and

d. Revising paragraph (c)(2).

The revisions read as follows:

§ 63.1329 Process contact cooling towers provisions.

(a) The owner or operator of each new affected source that manufactures PET is required to comply with paragraph (b) of this section. The owner or operator of each existing affected source that manufactures PET using a continuous terephthalic acid high viscosity multiple end finisher process that utilizes a process contact cooling tower shall comply with paragraph (c) of this section, and is not required to comply with paragraph (b) of this section. The compliance date for process contact cooling towers subject to the provisions of this section is specified in § 63.1311.

* * * * *

(c) *Existing affected source requirements.* The owner or operator of an existing affected source subject to this section who manufactures PET using a continuous terephthalic acid high viscosity multiple end finisher process, and who is subject or becomes subject to 40 CFR part 60, subpart DDD, shall maintain an ethylene glycol concentration in the process contact cooling tower at or below 4.0 percent by weight averaged on a daily basis over a rolling 14-day period of operating days. Compliance with this paragraph (c)

shall be determined as specified in paragraphs (c)(1) through (c)(4) of this section. It should be noted that compliance with this paragraph (c) does not exempt owners or operators from complying with the provisions of § 63.1330 for those process wastewater streams that are sent to the process contact cooling tower.

(1) * * *

(i) At least one sample per operating day shall be collected using the procedures specified in 40 CFR 60.564(j)(1)(i). An average ethylene glycol concentration by weight shall be calculated on a daily basis over a rolling 14-day period of operating days. Each daily average ethylene glycol concentration so calculated constitutes a performance test.

(ii) The owner or operator may elect to reduce the sampling program to any 14 consecutive operating day period once every two calendar months, if at least seventeen consecutive 14-day rolling average concentrations immediately preceding the reduced sampling program are each less than 1.2 weight percent ethylene glycol. If the average concentration obtained over the 14 operating day sampling during the reduced test period exceeds the upper 95 percent confidence interval calculated from the most recent test results in which no one 14-day average exceeded 1.2 weight percent ethylene glycol, then the owner or operator shall reinstitute a daily sampling program. The 95 percent confidence interval shall be calculated as specified in paragraph (c)(1)(iii) of this section. A reduced program may be reinstituted if the requirements specified in this paragraph (c)(1)(ii) are met.

(iii) The upper 95 percent confidence interval shall be calculated using the Equation 27 of this subpart:

$$CI_{95} = \frac{\sum_{i=1}^{n} X_i}{n} + 2\sqrt{\frac{n\sum_{i=1}^{n}\left(X_i^{\,2}\right) - \left(\sum_{i=1}^{n} X_i\right)^2}{n\,(n-1)}} \qquad \text{[Eq. 27]}$$

Where:

CI_{95} = 95 percent confidence interval

X_i = daily ethylene glycol concentration for each operating day used to calculate each 14-day rolling average used in test results to justify implementing the reduced testing program.

n = number of ethylene glycol concentrations.

(2) Measuring an alternative parameter, such as carbon oxygen demand or biological oxygen demand, that is demonstrated to be directly proportional to the ethylene glycol concentration shall be allowed. Such parameter shall be measured during the initial 14-day performance test during which the facility is shown to be in compliance with the ethylene glycol concentration standard whereby the ethylene glycol concentration is determined using the procedures described in paragraph (c)(1) of this section. The alternative parameter shall be measured on a daily basis and the average value of the alternative parameter shall be calculated on a daily basis over a rolling 14-day period of operating days. Each daily average value of the alternative parameter constitutes a performance test.

* * * * *

49. Section 63.1330 is amended by:

a. Revising paragraph (a);

b. Revising paragraph (b); and

c. Adding paragraph (c).

The revisions and additions read as follows:

§ 63.1330 Wastewater provisions.

(a) Except as specified in paragraphs (d) and (e) of this section, the owner or operator of each affected source shall comply, as specified in paragraph (b) of this section, with the requirements of §§ 63.132 through 63.147 for each process wastewater stream originating at an affected source, with the requirements of § 63.148 for leak inspection provisions, and with the requirements of § 63.149 for equipment that is subject to § 63.149. Further, the owner or operator of each affected source shall comply with the requirements of § 63.105(a) for maintenance wastewater as specified in paragraph (c) of this section.

(b) The owner or operator of each affected source shall comply with the requirements of §§ 63.132 through 63.149, with the differences noted in paragraphs (b)(1) through (b)(22) of this section for the purposes of this subpart.

(1) When the determination of equivalence criteria in § 63.102(b) is referred to in §§ 63.132, 63.133, and 63.137, the provisions in § 63.6(g) shall apply for the purposes of this subpart.

(2) When the storage vessel requirements contained in §§ 63.119 through 63.123 are referred to in §§ 63.132 through 63.149, §§ 63.119 through 63.123 are applicable, with the exception of the differences referred to in § 63.1314, for the purposes of this subpart.

(3) When § 63.146(a) requires the submission of a request for approval to monitor alternative parameters according to the procedures specified in § 63.151(f) or (g), owners or operators requesting to monitor alternative parameters shall follow the procedures specified in § 63.1335(f) for the purposes of this subpart.

(4) When § 63.147(d) requires owners or operators to keep records of the daily average value of each continuously monitored parameter for each operating day as specified in § 63.152(f), owners and operators shall instead keep records of the daily average value of each continuously monitored parameter as specified in § 63.1335(d) for the purposes of this subpart.

(5) When §§ 63.132 through 63.149 refer to an ''existing source,'' the term ''existing affected source,'' as defined in § 63.1310(a), shall apply for the purposes of this subpart.

(6) When §§ 63.132 through 63.149 refer to a ''new source,'' the term ''new affected source,'' as defined in § 63.1310(a), shall apply for the purposes of this subpart.

(7) When § 63.132(a) and (b) refer to the ''applicable dates specified in § 63.100 of subpart F of this part,'' the compliance dates specified in § 63.1311 shall apply for the purposes of this subpart.

(8) The provisions of paragraphs (b)(8)(i), (b)(8)(ii), and (b)(8)(iii) of this section clarify the organic HAP that an owner or operator shall consider when complying with the requirements in §§ 63.132 through 63.149.

(i) When §§ 63.132 through 63.149 refer to table 8 of compounds, the owner or operator is only required to consider 1,3-butadiene for purposes of this subpart.

(ii) When §§ 63.132 through 63.149 refer to table 9 of compounds, the owner or operator is only required to consider compounds that meet the definition of organic HAP in § 63.1312 and that are listed on table 9 of 40 CFR part 63, for the purposes of this subpart, except for ethylene glycol which need not be considered.

(iii) When §§ 63.132 through 63.149 refer to compounds in table 36 of 40 CFR part 63, subpart G, or compounds on List 1 and/or List 2, as listed on table 36 of 40 CFR part 63, subpart G, the owner or operator is only required to consider compounds that meet the definition of organic HAP in § 63.1312 and that are listed in table 36 of 40 CFR part 63, subpart G, for the purposes of this subpart.

(9) Whenever §§ 63.132 through 63.149 refer to a ''chemical manufacturing process unit,'' the term ''thermoplastic product process unit,'' (or TPPU) as defined in § 63.1312, shall apply for the purposes of this subpart. In addition, when § 63.149 refers to ''a chemical manufacturing process unit that meets the criteria of § 63.100(b) of subpart F of this part,'' the term ''a TPPU as defined in § 63.1312(b)'' shall apply for the purposes of this subpart.

(10) Whenever §§ 63.132 through 63.149 refer to a Group 1 wastewater stream or a Group 2 wastewater stream, the definitions of these terms contained in § 63.1312 shall apply for the purposes of this subpart.

(11) When § 63.149(d) refers to ''§ 63.100(f) of subpart F'', the phrase ''§ 63.1310(c)'' shall apply for the purposes of this subpart. In addition, where § 63.149(d) states ''and the item of equipment is not otherwise exempt from controls by the provisions of subpart A, F, G, or H of this part'', the phrase ''and the item of equipment is not otherwise exempt from controls by the provisions of subparts A, F, G, H, or JJJ of this part'' shall apply for the purposes of this subpart.

(12) When § 63.149(e)(1) and (e)(2) refer to ''a chemical manufacturing process unit subject to the new source requirements of 40 CFR § 63.100(l)(1) or 40 CFR § 63.100(l)(2),'' the phrase ''a TPPU that is part of a new affected source or that is a new affected source,'' shall apply for the purposes of this subpart.

(13) When the Notification of Compliance Status requirements contained in § 63.152(b) are referred to in §§ 63.138 and 63.146, the Notification of Compliance Status requirements contained in § 63.1335(e)(5) shall apply for the purposes of this subpart. In addition, when §§ 63.132 through 63.149 require that information be reported according to § 63.152(b) in the Notification of Compliance Status, the owner or operator of an affected source shall report the specified information in the Notification of Compliance Status required by § 63.1335(e)(5) for the purposes of this subpart.

(14) When the Periodic Report requirements contained in § 63.152(c) are referred to in § 63.146, the Periodic Report requirements contained in § 63.1335(e)(6) shall apply for the purposes of this subpart. In addition, when §§ 63.132 through 63.149 require that information be reported in the Periodic Reports required in § 63.152(c), the owner or operator of an affected source shall report the specified information in the Periodic Reports required in § 63.1335(e)(6) for the purposes of this subpart.

(15) When § 63.143(f) specifies that owners or operators shall establish the range that indicates proper operation of the treatment process or control device, the owner or operator shall instead comply with the requirements of § 63.1334(c) or (d) for establishing parameter level maximums/minimums for the purposes of this subpart.

(16) When § 63.146(b)(7) and § 63.146(b)(8) require that ''the information on parameter ranges specified in § 63.152(b)(2)'' be reported in the Notification of Compliance Status, owners and operators of affected sources are instead required to report the information on parameter levels as specified in § 63.1335(e)(5)(ii) for the purposes of this subpart.

(17) When the term ''range'' is used in §§ 63.132 through 63.149, the term ''level'' apply instead for the purposes of this subpart. This level shall be determined using the procedures specified in § 63.1334.

(18) For the purposes of this subpart, the owner or operator of an affected source is not required to include process wastewater streams that contain styrene when conducting performance tests for the purposes of calculating the required mass removal (RMR) or the actual mass removal (AMR) under the provisions described in § 63.145(f) or § 63.145(g). For purposes of this paragraph, a process wastewater stream is considered to contain styrene if the wastewater stream meets the requirements in paragraph (b)(18)(i), (ii), (iii), (iv), or (v) of this section.

(i) The wastewater stream originates at equipment that produces ABS or ABS latex;

(ii) The wastewater stream originates at equipment that produces EPS;

(iii) The wastewater stream originates at equipment that produces MABS;

(iv) The wastewater stream originates at equipment that produces MBS; or

(v) The wastewater stream originates at equipment that produces SAN.

(19) When the provisions of § 63.139(c)(1)(ii), § 63.145(d)(4), or § 63.145(i)(2) specify that Method 18, 40 CFR part 60, appendix A, shall be used, Method 18 or Method 25A, 40 CFR part 60, appendix A, may be used for the purposes of this subpart. The use of Method 25A, 40 CFR part 60, appendix A, shall conform with the requirements in paragraphs (b)(19)(i) and (b)(19)(ii) of this section.

(i) The organic HAP used as the calibration gas for Method 25A, 40 CFR part 60, appendix A, shall be the single organic HAP representing the largest percent by volume of the emissions.

(ii) The use of Method 25A, 40 CFR part 60, appendix A, is acceptable if the response from the high-level calibration gas is at least 20 times the standard deviation of the response from the zero calibration gas when the instrument is zeroed on the most sensitive scale.

(20) In § 63.145(j), instead of the reference to § 63.11(b), and instead of § 63.145(j)(1) and § 63.145(j)(2), the requirements in § 63.1333(e) shall apply.

(21) The owner or operator of a facility which receives a Group 1 wastewater stream, or a residual removed from a Group 1 wastewater stream, for treatment pursuant to § 63.132(g) is subject to the requirements of § 63.132(g) with the differences identified in this section, and is not subject to subpart DD of this part with respect to that material.

(22) When § 63.132(g) refers to ''§§ 63.133 through 63.137'' or ''§§ 63.133 through 63.147'', the provisions in this section 63.1330 shall apply, for the purposes of this subpart.

(c) For each affected source, the owner or operator shall comply with the requirements for maintenance wastewater in § 63.105, except that when § 63.105(a) refers to ''organic HAPs listed in table 9 of subpart G of this part,'' the owner or operator is only required to consider compounds that meet the definition of organic HAP in § 63.1312 and that are listed in table 9 of 40 CFR part 63, subpart G, except for ethylene glycol which need not be considered, for the purposes of this subpart.

* * * * *

50. Section 63.1331 is amended by:

a. Revising paragraph (a) introductory text;

b. Revising paragraph (a)(2);

c. Revising paragraphs (a)(4) and (a)(5);

d. Revising paragraph (a)(6) introductory text;

e. Revising paragraph (a)(6)(i);

f. Revising paragraphs (a)(6)(ii)(A) and (a)(6)(ii)(B);

g. Revising paragraph (a)(7);

h. Revising paragraph (a)(8) introductory text;

i. Revising paragraph (a)(10);

j. Revising paragraph (b);

k. Adding paragraphs (a)(6)(iii) and (a)(6)(iv);

l. Adding paragraphs (a)(11) through (a)(13); and

m. Removing and reserving paragraph (a)(9).

The revisions and additions read as follows:

§ 63.1331 Equipment leak provisions.

(a) Except as provided for in paragraphs (b) and (c) of this section, the owner or operator of each affected source shall comply with the requirements of subpart H of this part, with the differences noted in paragraphs (a)(1) through (a)(13) of this section.

* * * * *

(2) The compliance date for the equipment leak provisions contained in this section is provided in § 63.1311. Whenever subpart H of this part refers to the compliance dates specified in any paragraph contained in § 63.100, the compliance dates listed in § 63.1311(d) shall instead apply, for the purposes of this subpart. When § 63.182(c)(4) refers to ''sources subject to subpart F,'' the phrase ''sources subject to this subpart'' shall apply, for the purposes of this subpart. In addition, extensions of compliance dates are addressed by § 63.1311(e) instead of § 63.182(a)(6), for the purposes of this subpart.

* * * * *

(4) As specified in § 63.1335(e)(5), the Notification of Compliance Status required by paragraphs § 63.182(a)(2) and § 63.182(c) shall be submitted within 150 days (rather than 90 days) of the applicable compliance date specified in § 63.1311 for the equipment leak provisions.

(5) The information specified by § 63.182(a)(3) and § 63.182(d) (*i.e.*, Periodic Reports) shall be submitted as part of the Periodic Reports required by § 63.1335(e)(6).

(6) For pumps, valves, connectors, and agitators in heavy liquid service; pressure relief devices in light liquid or heavy liquid service; and instrumentation systems, owners or operators of affected sources producing PET shall comply with the requirements of paragraphs (a)(6)(i) and (a)(6)(ii) of this section instead of with the requirements of § 63.169. Owners or operators of PET affected sources shall comply with all other provisions of subpart H of this part for pumps, valves, connectors, and agitators in heavy liquid service; pressure relief devices in light liquid or heavy liquid service; and instrumentation systems, except as specified in paragraphs (a)(6)(iii) through (a)(6)(iv) of this section.

(i) A leak is determined to be detected if there is evidence of a potential leak found by visual, audible, or olfactory means. Method 21, 40 CFR part 60, appendix A may not be used to determine the presence or absence of a leak.

(ii)(A) When a leak is detected, it shall be repaired as soon as practical, but not later than 15 days after it is detected, except as provided in § 63.171.

(B) The first attempt at repair shall be made no later than 5 days after each leak is detected.

* * * * *

(iii) An owner or operator is not required to develop an initial list of identification numbers as would otherwise be required under § 63.181(b)(1)(i) or § 63.181(b)(4).

(iv) When recording the detection of a leak under § 63.182(d)(1), the owner or operator of an affected source shall comply with paragraphs (a)(6)(iv)(A) through (a)(6)(iv)(B) of this section.

(A) When complying with § 63.181(d)(1), provide an identification number for the leaking equipment at the time of recordkeeping. Further, the owner or operator is not required to record the identification number of the instrument (*i.e.*, Method 21 instrument) because the use of Method 21 is not an acceptable method for determining a leak under this paragraph (a)(6).

(B) An owner or operator is not required to comply with § 63.181(d)(4) which requires a record of the maximum instrument reading measured by Method 21 of 40 CFR part 60, appendix A.

(7) When § 63.166(b)(4)(i) refers to Table 9 of subpart G of this part, the owner or operator is only required to consider organic HAP listed on Table 6 of this subpart for purposes of this subpart, except for ethylene glycol which need not be considered.

(8) When the provisions of subpart H of this part specify that Method 18, 40 CFR part 60, appendix A, shall be used, Method 18 or Method 25A, 40 CFR part 60, appendix A, may be used for the purposes of this subpart. The use of Method 25A, 40 CFR part 60, appendix A, shall conform with the requirements in paragraphs (a)(8)(i) and (a)(8)(ii) of this section.

* * * * *

(9) [Reserved.]

(10) If specific items of equipment, comprising part of a process unit subject to this subpart, are managed by different administrative organizations (*e.g.*, different companies, affiliates, departments, divisions, *etc.*), those items of equipment may be aggregated with any TPPU within the affected source for all purposes under subpart H of this part, providing there is no delay in achieving the applicable compliance date.

(11) When the terms ''equipment'' and ''equipment leak'' are used in subpart H of this part, the definitions of these terms in § 63.1312 shall apply for the purposes of this subpart.

(12) The phrase ''the provisions of subparts F, I, or JJJ of this part'' shall apply instead of the phrase ''the provisions of subpart F or I of this part'' throughout §§ 63.163 and 63.168, for the purposes of this subpart. In addition, the phrase ''subparts F, I, and JJJ'' shall apply instead of the phrase ''subparts F and I'' in § 63.174(c)(2)(iii), for the purposes of this subpart.

(13) An owner or operator using a flare to comply with the requirements of this section shall conduct a compliance demonstration as specified in § 63.1333(e).

(b) The provisions of this section do not apply to each TPPU producing PET using a process other than a continuous terephthalic acid (TPA) high viscosity multiple end finisher process that is part of an affected source if all of the equipment leak components subject to this section § 63.1331 in the TPPU are either in vacuum service or in heavy liquid service.

(1) Owners and operators of a TPPU exempted under paragraph (b) of this section shall comply with paragraph (b)(1)(i) or (b)(1)(ii) of this section.

(i) Retain information, data, and analyses used to demonstrate that all of the components in the exempted TPPU are either in vacuum service or in heavy liquid service. For components in vacuum service, examples of information that could document this include, but are not limited to, analyses of process stream composition and process conditions, engineering calculations, or process knowledge. For components in heavy liquid service, such documentation shall include an analysis or demonstration that the process fluids do not meet the criteria of ''in light liquid service'' or ''in gas or vapor service.''

(ii) When requested by the Administrator, demonstrate that all of the components in the TPPU are either in vacuum service or in heavy liquid service.

(2) If changes occur at a TPPU exempted under paragraph (b) of this section such that all of the components in the TPPU are no longer either in vacuum service or in heavy liquid service (*e.g.*, by either process changes or the addition of new components), the owner or operator of the affected source shall comply with the provisions of this section for all of the components at the TPPU. The owner or operator shall

submit a report within 180 days after the process change is made or the information regarding the process change is known to the owner or operator. This report may be included in the next Periodic Report, as specified in paragraph (a)(5) of this section. A description of the process change shall be submitted with this report.

* * * * *

51. Section 63.1333 is amended by:

a. Revising the section title;

b. Revising paragraph (a) introductory text;

c. Revising paragraphs (a)(1) and (a)(2);

d. Revising paragraph (a)(4);

e. Revising paragraph (b) introductory text;

f. Adding paragraph (a)(5); and

g. Adding paragraph (e).

The revisions and additions read as follows:

§ 63.1333 Additional requirements for performance testing.

(a) Performance testing shall be conducted in accordance with § 63.7(a)(1), (a)(3), (d), (e)(1), (e)(2), (e)(4), (g), and (h), with the exceptions specified in paragraphs (a)(1) through (a)(5) of this section and the additions specified in paragraphs (b) through (d) of this section. Sections 63.1314 through 63.1330 also contain specific testing requirements.

(1) Performance tests shall be conducted according to the provisions of § 63.7(e)(1) and (e)(2), except that performance tests shall be conducted at maximum representative operating conditions achievable during one of the time periods described in paragraph (a)(1)(i) of this section, without causing any of the situations described in paragraph (a)(1)(ii) of this section to occur.

(i) The 6-month period that ends 2 months before the Notification of Compliance Status is due, according to § 63.1335(e)(5); or the 6-month period that begins 3 months before the performance test and ends 3 months after the performance test.

(ii) Causing damage to equipment; necessitating that the owner or operator make product that does not meet an existing specification for sale to a customer; or necessitating that the owner or operator make product in excess of demand.

(2) The requirements in § 63.1335(e)(5) shall apply instead of the references in § 63.7(g) to the Notification of Compliance Status requirements in § 63.9(h).

* * * * *

(4) The owner or operator shall notify the Administrator of the intention to conduct a performance test at least 30 days before the performance test is scheduled to allow the Administrator the opportunity to have an observer present during the test. If after 30 days notice for an initially scheduled performance test, there is a delay (due to operational problems, etc.) in conducting the scheduled performance test, the owner or operator of an affected facility shall notify the Administrator as soon as possible of any delay in the original test date, either by providing at least 7 days prior notice of the rescheduled date of the performance test, or by arranging a rescheduled date with the Administrator by mutual agreement.

(5) Performance tests shall be performed no later than 150 days after the compliance dates specified in this subpart (*i.e.*, in time for the results to be included in the Notification of Compliance Status), rather than according to the time periods in § 63.7(a)(2) of subpart A of this part.

(b) Each owner or operator of an existing affected source producing MBS complying with § 63.1315(b)(2) shall determine compliance with the mass emission per mass product standard by using Equation 49 of this subpart. When determining E_i, when the provisions of § 63.116(c)(4) specify that Method 18, 40 CFR part 60, appendix A, shall be used, Method 18 or Method 25A, 40 CFR part 60, appendix A, may be used for the purposes of this subpart. The use of Method 25A, 40 CFR part 60, appendix A, shall conform with the requirements in paragraphs (b)(1) and (b)(2) of this section.

$$ER_{MBS} = \frac{\sum_{i=1}^{n} E_i}{PP_M} \qquad \text{[Eq. 49]}$$

Where:

ER_{MBS} = Emission rate of organic HAP or TOC from continuous process vents, kg/Mg product.

E_i = Emission rate of organic HAP or TOC from continuous process vent i as calculated using the procedures specified in § 63.116(c)(4), kg/month.

PP_M = Amount of polymer produced in one month as determined by the procedures specified in § 63.1318(b)(1)(ii), Mg/month.

n = Number of continuous process vents.

* * * * *

(e) Notwithstanding any other provision of this subpart, if an owner or operator of an affected source uses a flare to comply with any of the requirements of this subpart, the owner or operator shall comply with paragraphs (e)(1) through (e)(3) of this section. The owner or operator is not required to conduct a performance test to determine percent emission reduction or outlet organic HAP or TOC concentration. If a compliance demonstration has been conducted previously for a flare, using the techniques specified in paragraphs (e)(1) through (e)(3) of this section, that compliance demonstration may be used to satisfy the requirements of this paragraph if either no deliberate process changes have been made since the compliance demonstration, or the results of the compliance demonstration reliably demonstrate compliance despite process changes.

(1) Conduct a visible emission test using the techniques specified in § 63.11(b)(4);

(2) Determine the net heating value of the gas being combusted, using the techniques specified in § 63.11(b)(6); and

(3) Determine the exit velocity using the techniques specified in either § 63.11(b)(7)(i) (and § 63.11(b)(7)(iii), where applicable) or § 63.11(b)(8), as appropriate.

52. Section 63.1334 is amended by:

a. Revising paragraph (a);

b. Revising paragraph (b) introductory text;

c. Revising paragraph (b)(3) introductory text;

d. Revising paragraphs (b)(3)(i)(A) through (b)(3)(i)(D);

e. Revising paragraph (b)(3)(ii);

f. Revising paragraph (c);

g. Revising paragraph (d);

h. Revising paragraph (f)(1) introductory text;

i. Revising paragraphs (f)(1)(ii) and (f)(1)(iii);

j. Revising paragraph (f)(2) introductory text;

k. Revising paragraph (f)(2)(ii);

l. Removing and reserving paragraph (b)(1);

m. Removing and reserving paragraph (e);

n. Removing paragraph (b)(3)(i)(E);

o. Adding paragraph (f)(1)(v); and

p. Adding paragraph (f)(3) through (f)(7).

The revisions and additions read as follows:

§ 63.1334 Parameter monitoring levels and excursions.

(a) *Establishment of parameter monitoring levels.* The owner or operator of a control or recovery device that has one or more parameter monitoring level requirements specified under this subpart shall establish a maximum or minimum level for each

measured parameter. If a performance test is required by this subpart for a control device, the owner or operator shall use the procedures in either paragraph (b) or (c) of this section to establish the parameter monitoring level(s). If a performance test is not required by this subpart for a control device, the owner or operator may use the procedures in paragraph (b), (c) or (d) of this section to establish the parameter monitoring level(s). When using the procedures specified in paragraph (c) or (d) of this section, the owner or operator shall submit the information specified in § 63.1335(e)(3)(vii) for review and approval as part of the Precompliance Report.

(1) The owner or operator shall operate control and recovery devices such that the daily average of monitored parameters remains above the minimum established level or below the maximum established level, except as otherwise stated in this subpart.

(2) As specified in § 63.1335(e)(5), all established levels, along with their supporting documentation and the definition of an operating day, shall be submitted as part of the Notification of Compliance Status.

(3) Nothing in this section shall be construed to allow a monitoring parameter excursion caused by an activity that violates other applicable provisions of subpart A, F, G, or H of this part.

(b) *Establishment of parameter monitoring levels based exclusively on performance tests.* In cases where a performance test is required by this subpart, or the owner or operator of the affected source elects to do a performance test in accordance with the provisions of this subpart, and an owner or operator elects to establish a parameter monitoring level for a control, recovery, or recapture device based exclusively on parameter values measured during the performance test, the owner or operator of the affected source shall comply with the procedures in paragraphs (b)(1) through (b)(4) of this section, as applicable.

(1) [Reserved.]

* * * * *

(3) *Batch process vents.* The monitoring level(s) shall be established using the procedures specified in either paragraph (b)(3)(i) or (b)(3)(ii) of this section. The procedures specified in this paragraph (b)(3) may only be used if the batch emission episodes, or portions thereof, selected to be controlled were tested, and monitoring data were collected, during the entire period in which emissions were vented to the control device, as specified in § 63.1325(c)(1)(i). If the owner or operator chose to test only a portion of the batch emission episode, or portion thereof, selected to be controlled, the procedures in paragraph (c) of this section shall be used.

(i) * * *

(A) The average monitored parameter value shall be calculated for each batch emission episode, or portion thereof, in the batch cycle selected to be controlled. The average shall be based on all values measured during the required performance test.

(B) If the level to be established is a maximum operating parameter, the level shall be defined as the minimum of the average parameter values of the batch emission episodes, or portions thereof, in the batch cycle selected to be controlled (*i.e.*, identify the emission episode, or portion thereof, which requires the lowest parameter value in order to assure compliance. The average parameter value that is necessary to assure compliance for that emission episode, or portion thereof, shall be the level for all emission episodes, or portions thereof, in the batch cycle, that are selected to be controlled).

(C) If the level to be established is a minimum operating parameter, the level shall be defined as the maximum of the average parameter values of the batch emission episodes, or portions thereof, in the batch cycle selected to be controlled (*i.e.*, identify the emission episode, or portion thereof, which requires the highest parameter value in order to assure compliance. The average parameter value that is necessary to assure compliance for that emission episode, or portion thereof, shall be the level for all emission episodes, or portions thereof, in the batch cycle, that are selected to be controlled).

(D) Alternatively, an average monitored parameter value shall be calculated for the entire batch cycle based on all values measured during each batch emission episode, or portion thereof, selected to be controlled.

(ii) Instead of establishing a single level for the batch cycle, as described in paragraph (b)(3)(i) of this section, an owner or operator may establish separate levels for each batch emission episode, or portion thereof, selected to be controlled. Each level shall be determined as specified in paragraph (b)(3)(i)(A) of this section.

* * * * *

(c) *Establishment of parameter monitoring levels based on performance tests, supplemented by engineering assessments and/or manufacturer's recommendations.* In cases where a performance test is required by this subpart, or the owner or operator elects to do a performance test in accordance with the provisions of this subpart, and an owner or operator elects to establish a parameter monitoring level for a control, recovery, or recapture device under this paragraph (c), the owner or operator shall supplement the parameter values measured during the performance test with engineering assessments and/or manufacturer's recommendations. Performance testing is not required to be conducted over the entire range of expected parameter values.

(d) *Establishment of parameter monitoring based on engineering assessments and/or manufacturer's recommendations.* In cases where a performance test is not required by this subpart and an owner or operator elects to establish a parameter monitoring level for a control, recovery, or recapture device under this paragraph (d), the determination of the parameter monitoring level shall be based exclusively on engineering assessments and/or manufacturer's recommendations.

(e) [Reserved.]

(f) *Parameter monitoring excursion definitions.* (1) With respect to storage vessels (where the applicable monitoring plan specifies continuous monitoring), continuous process vents, aggregate batch vent streams, and process wastewater streams, an excursion means any of the three cases listed in paragraphs (f)(1)(i) through (f)(1)(iii) of this section. For a control or recovery device where multiple parameters are monitored, if one or more of the parameters meets the excursion criteria in paragraphs (f)(1)(i) through (f)(1)(iii) of this section, this is considered a single excursion for the control or recovery device. For each excursion, the owner or operator shall be deemed out of compliance with the provisions of this subpart, except as provided in paragraph (g) of this section.

* * * * *

(ii) When the period of control or recovery device operation, with the exception noted in paragraph (f)(1)(v) of this section, is 4 hours or greater in an operating day, and monitoring data are insufficient, as defined in paragraph (f)(1)(iv) of this section, to constitute a valid hour of data for at least 75 percent of the operating hours.

(iii) When the period of control or recovery device operation, with the exception noted in paragraph (f)(1)(v) of this section, is less than 4 hours in an

operating day and more than two of the hours during the period of operation do not constitute a valid hour of data due to insufficient monitoring data, as defined in paragraph (f)(1)(iv) of this section.

* * * * *

(v) The periods listed in paragraphs (f)(1)(v)(A) through (f)(1)(v)(E) of this section are not considered to be part of the period of control or recovery device operation, for the purposes of paragraphs (f)(1)(ii) and (f)(1)(iii) of this section.

(A) Monitoring system breakdowns, repairs, calibration checks, and zero (low-level) and high-level adjustments;

(B) Start-ups;

(C) Shutdowns;

(D) Malfunctions; or

(E) Periods of non-operation of the affected source (or portion thereof), resulting in cessation of the emissions to which the monitoring applies.

(2) With respect to batch process vents, an excursion means one of the two cases listed in paragraphs (f)(2)(i) and (f)(2)(ii) of this section. For a control device where multiple parameters are monitored, if one or more of the parameters meets the excursion criteria in either paragraph (f)(2)(i) or (f)(2)(ii) of this section, this is considered a single excursion for the control device. For each excursion, the owner or operator shall be deemed out of compliance with the provisions of this subpart, except as provided in paragraph (g) of this section.

* * * * *

(ii) When monitoring data are insufficient for an operating day. Monitoring data shall be considered insufficient when measured values are not available for at least 75 percent of the 15-minute periods when batch emission episodes selected to be controlled are being vented to the control device during the operating day, using the procedures specified in paragraphs (f)(2)(ii)(A) through (f)(2)(ii)(D) of this section.

(A) Determine the total amount of time during the operating day when batch emission episodes selected to be controlled are being vented to the control device.

(B) Subtract the time during the periods listed in paragraphs (f)(2)(ii)(B)(*1*) through (f)(2)(ii)(B)(*4*) of this section from the total amount of time determined in paragraph (f)(2)(ii)(A) of this section, to obtain the operating time used to determine if monitoring data are insufficient.

(*1*) Monitoring system breakdowns, repairs, calibration checks, and zero (low-level) and high-level adjustments;

(*2*) Start-ups;

(*3*) Shutdowns; or

(*4*) Malfunctions.

(C) Determine the total number of 15-minute periods in the operating time used to determine if monitoring data are insufficient, as was determined in accordance with paragraph (f)(2)(ii)(B) of this section.

(D) If measured values are not available for at least 75 percent of the total number of 15-minute periods determined in paragraph (f)(2)(ii)(C) of this section, the monitoring data are insufficient for the operating day.

(3) For storage vessels where the applicable monitoring plan does not specify continuous monitoring, an excursion is defined in paragraph (f)(3)(i) or (ii) of this section, as applicable. For a control or recovery device where multiple parameters are monitored, if one or more of the parameters meets the excursion criteria, this is considered a single excursion for the control or recovery device. For each excursion, the owner or operator shall be deemed out of compliance with the provisions of this subpart, except as provided in paragraph (g) of this section.

(i) If the monitoring plan specifies monitoring a parameter and recording its value at specific intervals (such as every 15 minutes or every hour), either of the cases listed in paragraph (f)(3)(i)(A) or (f)(3)(i)(B) of this section is considered a single excursion for the control device. For each excursion, the owner or operator shall be deemed out of compliance with the provisions of this subpart, except as provided in paragraph (g) of this section.

(A) When the average value of one or more parameters, averaged over the duration of the filling period for the storage vessel, is above the maximum level or below the minimum level established for the given parameters.

(B) When monitoring data are insufficient. Monitoring data shall be considered insufficient when measured values are not available for at least 75 percent of the specific intervals at which parameters are to be monitored and recorded, according to the storage vessel's monitoring plan, during the filling period for the storage vessel.

(ii) If the monitoring plan does not specify monitoring a parameter and recording its value at specific intervals (for example, if the relevant operating requirement is to exchange a disposable carbon canister before expiration of its rated service life), the monitoring plan shall define an excursion in terms of the relevant operating requirement.

(4) With respect to continuous process vents complying with the mass emissions per mass product requirements specified in § 63.1316(b)(1)(i)(A), (b)(1)(ii), (b)(2)(i), (b)(2)(ii), or (c)(1)(i), an excursion has occurred when the mass emission rate calculated as specified in § 63.1318(c) exceeds the appropriate mass emissions per mass product requirement. For each excursion, the owner or operator shall be deemed out of compliance with the provisions of this subpart, except as provided in paragraph (g) of this section.

(5) With respect to continuous process vents complying with the temperature limits for final condensers specified in § 63.1316(b)(1)(i)(B) or (c)(1)(ii), an excursion has occurred when the daily average exit temperature exceeds the appropriate condenser temperature limit. For each excursion, the owner or operator shall be deemed out of compliance with the provisions of this subpart, except as provided in paragraph (g) of this section. The periods listed in paragraphs (f)(5)(i) through (f)(5)(v) of this section are not considered to be part of the period of operation for the condenser for purposes of determining the daily average exit temperature.

(i) Monitoring system breakdowns, repairs, calibration checks, and zero (low-level) and high-level adjustments;

(ii) Start-ups;

(iii) Shutdowns;

(iv) Malfunctions; or

(v) Periods of non-operation of the affected source (or portion thereof), resulting in cessation of the emissions to which the monitoring applies.

(6) With respect to new affected sources producing SAN using a batch process, an excursion has occurred when the percent reduction calculated using the procedures specified in § 63.1333(c) is less than 84 percent. For each excursion, the owner or operator shall be deemed out of compliance with the provisions of this subpart, except as provided in paragraph (g) of this section. The periods listed in paragraphs (f)(6)(i) through (f)(6)(v) of this section are not considered to be part of the period of control or recovery device operation for purposes of determining the percent reduction.

(i) Monitoring system breakdowns, repairs, calibration checks, and zero (low-level) and high-level adjustments;

(ii) Start-ups;

(iii) Shutdowns;

(iv) Malfunctions; or

(v) Periods of non-operation of the affected source (or portion thereof), resulting in cessation of the emissions to which the monitoring applies.

(7) With respect to continuous process vents complying with the mass

emissions per mass product requirement specified in § 63.1315(b)(2), an excursion has occurred when the mass emission rate calculated as specified in § 63.1333(b) exceeds the mass emissions per mass product requirement specified in § 63.1315(b)(2). For each excursion, the owner or operator shall be deemed out of compliance with the provisions of this subpart, except as provided in paragraph (g) of this section.

* * * * *

53. Section 63.1335 is amended by:

a. Revising paragraph (a);

b. Revising paragraph (b)(1) introductory text;

c. Revising paragraph (b)(1)(i) introductory text;

d. Revising paragraphs (b)(1)(i)(A) through (b)(1)(i)(C);

e. Revising paragraph (b)(1)(ii);

f. Revising paragraph (b)(2);

g. Revising paragraph (d) introductory text;

h. Revising paragraph (d)(2);

i. Revising paragraph (d)(3);

j. Revising paragraphs (d)(6) through (d)(9);

k. Revising paragraph (e) introductory text;

l. Revising paragraphs (e)(1) through (e)(3);

m. Revising paragraph (e)(4) introductory text;

n. Revising paragraph (e)(4)(i);

o. Revising paragraph (e)(4)(ii) introductory text;

p. Revising paragraph (e)(4)(ii)(B);

q. Revising paragraph (e)(4)(ii)(D);

r. Revising paragraph (e)(4)(ii)(F)(*2*);

s. Revising paragraphs (e)(4)(ii)(F)(*4*) and (e)(4)(ii)(F)(*5*);

t. Revising paragraph (e)(4)(ii)(H)(*2*);

u. Revising paragraph (e)(4)(ii)(J)(*2*);

v. Revising paragraph (e)(4)(ii)(L)(*2*);

w. Revising paragraph (e)(4)(ii)(N);

x. Revising paragraphs (e)(4)(iii) and (e)(4)(iv) introductory text;

y. Revising paragraph (e)(4)(iv)(A) introductory text;

z. Revising paragraph (e)(4)(iv)(B) introductory text;

aa. Revising paragraph (e)(4)(iv)(C);

bb. Revising paragraph (e)(5) introductory text;

cc. Revising paragraph (e)(5)(i) introductory text;

dd. Revising paragraph (e)(5)(i)(A);

ee. Revising paragraph (e)(5)(ii) introductory text;

ff. Revising paragraph (e)(5)(iv);

gg. Revising paragraphs (e)(5)(vi) through (e)(5)(viii);

hh. Revising paragraph (e)(6) introductory text;

jj. Revising paragraphs (e)(6)(i) and (e)(6)(ii);

kk. Revising paragraph (e)(6)(iii)(B);

ll. Revising paragraph (e)(6)(iii)(D) introductory text;

mm. Revising paragraphs (e)(6)(iii)(D)(*2*) and (e)(6)(iii)(D)(*3*);

nn. Revising paragraph (e)(6)(iv);

oo. Revising paragraph (e)(6)(v)(B);

pp. Revising paragraphs (e)(6)(vi) through (e)(6)(xi);

qq. Revising paragraph (e)(7) introductory text;

rr. Revising paragraph (e)(7)(ii);

ss. Revising paragraph (e)(8) introductory text;

tt. Revising paragraphs (e)(8)(i) and (e)(8)(ii);

uu. Revising paragraph (f) introductory text;

vv. Revising paragraph (f)(3) introductory text;

ww. Revising paragraph (g) introductory text;

xx. Revising paragraph (g)(3) introductory text;

yy. Revising paragraph (g)(3)(i)(A);

zz. Revising paragraph (g)(4);

aaa. Revising paragraph (h) introductory text;

bbb. Revising paragraph (h)(1) introductory text;

ccc. Revising paragraph (h)(1)(ii)(B);

ddd. Revising paragraph (h)(1)(iv);

eee. Revising paragraph (h)(1)(vi) introductory text;

fff. Revising paragraphs (h)(1)(vi)(B) and (h)(1)(vi)(C);

ggg. Revising paragraph (h)(2)(i);

hhh. Revising paragraph (h)(2)(iii);

iii. Removing paragraph (b)(1)(i)(D);

jjj. Removing paragraph (d)(10);

kkk. Removing paragraph (e)(8)(iii);

lll. Removing and reserving paragraph (c);

mmm. Removing and reserving paragraph (d)(4) and (d)(5);

nnn. Removing and reserving paragraphs (e)(6)(iii)(C);

ooo. Adding paragraphs (e)(5)(ix) through (e)(5)(xi);

ppp. Adding paragraph (e)(6)(iii)(D)(*4*);

qqq. Adding paragraph (e)(6)(xii);

rrr. Adding paragraphs (e)(7)(iii) and (e)(7)(iv); and

sss. Adding paragraph (h)(1)(vi)(D).

The revisions and additions read as follows:

§ 63.1335 General recordkeeping and reporting provisions.

(a) *Data retention.* Unless otherwise specified in this subpart, the owner or operator of an affected source shall keep copies of all applicable records and reports required by this subpart for at least 5 years, as specified in paragraph (a)(1) of this section, with the exception listed in paragraph (a)(2) of this section.

(1) All applicable records shall be maintained in such a manner that they can be readily accessed. The most recent 6 months of records shall be retained on site or shall be accessible from a central location by computer or other means that provides access within 2 hours after a request. The remaining 4 and one-half years of records may be retained offsite. Records may be maintained in hard copy or computer-readable form including, but not limited to, on paper, microfilm, computer, floppy disk, magnetic tape, or microfiche.

(2) If an owner or operator submits copies of reports to the appropriate EPA Regional Office, the owner or operator is not required to maintain copies of reports. If the EPA Regional Office has waived the requirement of § 63.10(a)(4)(ii) for submittal of copies of reports, the owner or operator is not required to maintain copies of those reports.

(b) * * *

(1) *Start-up, shutdown, and malfunction plan.* The owner or operator of an affected source shall develop and implement a written start-up, shutdown, and malfunction plan as specified in § 63.6(e)(3). This plan shall describe, in detail, procedures for operating and maintaining the affected source during periods of start-up, shutdown, and malfunction and a program for corrective action for malfunctioning process and air pollution control equipment used to comply with this subpart. Inclusion of Group 2 emission points is not required, unless these points are included in an emissions average. For equipment leaks (subject to § 63.1331), the start-up, shutdown, and malfunction plan requirement is limited to control devices and is optional for other equipment. For equipment leaks, the start-up, shutdown, and malfunction plan may include written procedures that identify conditions that justify a delay of repair. A provision for ceasing to collect, during a start-up, shutdown, or malfunction, monitoring data that would otherwise be required by the provisions of this subpart may be included in the start-up, shutdown, and malfunction plan only if the owner or operator has demonstrated to the Administrator, through the Precompliance Report or a supplement to the Precompliance Report, that the monitoring system would be damaged or destroyed if it were not shut down during the start-up, shutdown, or malfunction. The affected source shall keep the start-up, shutdown, and malfunction plan on-site. Records associated with the plan shall be kept as specified in paragraphs (b)(1)(i)(A) through (b)(1)(i)(C) of this section. Reports related to the plan shall be

submitted as specified in paragraph (b)(1)(ii) of this section.

(i) *Records of start-up, shutdown, and malfunction.* The owner or operator shall keep the records specified in paragraphs (b)(1)(i)(A) through (b)(1)(i)(C) of this section.

(A) Records of the occurrence and duration of each start-up, shutdown, and malfunction of operation of process equipment or control devices or recovery devices or continuous monitoring systems used to comply with this subpart during which excess emissions (as defined in § 63.1310(j)(4)) occur.

(B) For each start-up, shutdown, or malfunction during which excess emissions (as defined in § 63.1310(j)(4)) occur, records reflecting whether the procedures specified in the affected source's start-up, shutdown, and malfunction plan were followed, and documentation of actions taken that are not consistent with the plan. For example, if a start-up, shutdown, and malfunction plan includes procedures for routing a control device to a backup control device, records shall be kept of whether the plan was followed. These records may take the form of a ''checklist,'' or other form of recordkeeping that confirms conformance with the start-up shutdown, and malfunction plan for the event.

(C) Records specified in paragraphs (b)(1)(i)(A) through (b)(1)(i)(B) of this section are not required if they pertain solely to Group 2 emission points that are not included in an emissions average.

(ii) *Reports of start-up, shutdown, and malfunction.* For the purposes of this subpart, the semiannual start-up, shutdown, and malfunction reports shall be submitted on the same schedule as the Periodic Reports required under paragraph (e)(6) of this section instead of being submitted on the schedule specified in § 63.10(d)(5)(i). The reports shall include the information specified in § 63.10(d)(5)(i).

(2) *Application for approval of construction or reconstruction.* For new affected sources, each owner or operator shall comply with the provisions in § 63.5 regarding construction and reconstruction, excluding the provisions specified in § 63.5(d)(1)(ii)(H), (d)(1)(iii), (d)(2), and (d)(3)(ii).

(c) [Reserved.]

(d) *Recordkeeping and documentation.* Owners or operators required to keep continuous records shall keep records as specified in paragraphs (d)(1) through (d)(7) of this section, unless an alternative recordkeeping system has been requested and approved as specified in paragraph (g) of this section, and except as provided in paragraph (h) of this section. If a monitoring plan for storage vessels pursuant to § 63.1314(a)(9) requires continuous records, the monitoring plan shall specify which provisions, if any, of paragraphs (d)(1) through (d)(7) of this section apply. As described in § 63.1314(a)(9), certain storage vessels are not required to keep continuous records as specified in this paragraph. Owners and operators of such storage vessels shall keep records as specified in the monitoring plan required by § 63.1314(a)(9). Paragraphs (d)(8) and (d)(9) of this section specify documentation requirements.

* * * * *

(2) The owner or operator shall record either each measured data value or block average values for 1 hour or shorter periods calculated from all measured data values during each period. If values are measured more frequently than once per minute, a single value for each minute may be used to calculate the hourly (or shorter period) block average instead of all measured values. Owners or operators of batch process vents shall record each measured data value.

(3) Daily average (or batch cycle daily average) values of each continuously monitored parameter shall be calculated for each operating day as specified in paragraphs (d)(3)(i) through (d)(3)(ii) of this section, except as specified in paragraphs (d)(6) and (d)(7) of this section.

(i) The daily average value or batch cycle daily average shall be calculated as the average of all parameter values recorded during the operating day, except as specified in paragraph (d)(7) of this section. For batch process vents, as specified in § 63.1326(e)(2)(i), only parameter values measured during those batch emission episodes, or portions thereof, in the batch cycle that the owner or operator has chosen to control shall be used to calculate the average. The calculated average shall cover a 24-hour period if operation is continuous, or the number of hours of operation per operating day if operation is not continuous.

(ii) The operating day shall be the period the owner or operator specifies in the operating permit or the Notification of Compliance Status for purposes of determining daily average values or batch cycle daily average values of monitored parameters.

(4) [Reserved]

(5) [Reserved]

(6) *Records required when all recorded values are within the established limits.* If all recorded values for a monitored parameter during an operating day are above the minimum level or below the maximum level established in the Notification of Compliance Status or operating permit, the owner or operator may record that all values were above the minimum level or below the maximum level rather than calculating and recording a daily average (or batch cycle daily average) for that operating day.

(7) Monitoring data recorded during periods identified in paragraphs (d)(7)(i) through (d)(7)(v) of this section shall not be included in any average computed under this subpart. Records shall be kept of the times and durations of all such periods and any other periods during process or control device or recovery device operation when monitors are not operating.

(i) Monitoring system breakdowns, repairs, calibration checks, and zero (low-level) and high-level adjustments;

(ii) Start-ups;

(iii) Shutdowns;

(iv) Malfunctions;

(v) Periods of non-operation of the affected source (or portion thereof), resulting in cessation of the emissions to which the monitoring applies.

(8) For continuous monitoring systems used to comply with this subpart, records documenting the completion of calibration checks, and records documenting the maintenance of continuous monitoring systems that are specified in the manufacturer's instructions or that are specified in other written procedures that provide adequate assurance that the equipment would reasonably be expected to monitor accurately.

(9) The owner or operator of an affected source granted a waiver under § 63.10(f) shall maintain the information, if any, specified by the Administrator as a condition of the waiver of recordkeeping or reporting requirements.

(e) *Reporting and notification.* In addition to the reports and notifications required by subpart A of this part as specified in Table 1 of this subpart, the owner or operator of an affected source shall prepare and submit the reports listed in paragraphs (e)(3) through (e)(8) of this section, as applicable. All reports required by this subpart, and the schedule for their submittal, are listed in Table 9 of this subpart.

(1) Owners and operators shall not be in violation of the reporting requirements of this subpart for failing to submit information required to be included in a specified report if the owner or operator meets the requirements in paragraphs (e)(1)(i)

through (e)(1)(iii) of this section. Examples of circumstances where this paragraph may apply include information related to newly-added equipment or emission points, changes in the process, changes in equipment required or utilized for compliance with the requirements of this subpart, or changes in methods or equipment for monitoring, recordkeeping, or reporting.

(i) The information was not known in time for inclusion in the report specified by this subpart;

(ii) The owner or operator has been diligent in obtaining the information; and

(iii) The owner or operator submits a report according to the provisions of paragraphs (e)(1)(iii)(A) through (e)(1)(iii)(C) of this section.

(A) If this subpart expressly provides for supplements to the report in which the information is required, the owner or operator shall submit the information as a supplement to that report. The information shall be submitted no later than 60 days after it is obtained, unless otherwise specified in this subpart.

(B) If this subpart does not expressly provide for supplements, but the owner or operator must submit a request for revision of an operating permit pursuant to part 70 or part 71, due to circumstances to which the information pertains, the owner or operator shall submit the information with the request for revision to the operating permit.

(C) In any case not addressed by paragraph (e)(1)(iii)(A) or (e)(1)(iii)(B) of this paragraph, the owner or operator shall submit the information with the first Periodic Report, as required by this subpart, which has a submission deadline at least 60 days after the information is obtained.

(2) All reports required under this subpart shall be sent to the Administrator at the appropriate address listed in § 63.13. If acceptable to both the Administrator and the owner or operator of an affected source, reports may be submitted on electronic media.

(3) *Precompliance Report.* Owners or operators of affected sources requesting an extension for compliance; requesting approval to use alternative monitoring parameters, alternative continuous monitoring and recordkeeping, or alternative controls; requesting approval to use engineering assessment to estimate emissions from a batch emissions episode, as described in § 63.1323(b)(6)(i)(C); wishing to establish parameter monitoring levels according to the procedures contained in § 63.1334(c) or (d); or requesting approval to incorporate a provision for ceasing to collect monitoring data, during a start-up, shutdown, or malfunction, into the start-up, shutdown, and malfunction plan, when that monitoring equipment would be damaged if it did not cease to collect monitoring data, as permitted under § 63.1310(j)(3), shall submit a Precompliance Report according to the schedule described in paragraph (e)(3)(i) of this section. The Precompliance Report shall contain the information specified in paragraphs (e)(3)(ii) through (e)(3)(viii) of this section, as appropriate.

(i) *Submittal dates.* The Precompliance Report shall be submitted to the Administrator no later than December 19, 2000. If a Precompliance Report was submitted prior to June 19, 2000 and no changes need to be made to that Precompliance Report, the owner or operator shall re-submit the earlier report or submit notification that the previously submitted report is still valid. Unless the Administrator objects to a request submitted in the Precompliance Report within 45 days after its receipt, the request shall be deemed approved. For new affected sources, the Precompliance Report shall be submitted to the Administrator with the application for approval of construction or reconstruction required in paragraph (b)(2) of this section. Supplements to the Precompliance Report may be submitted as specified in paragraph (e)(3)(ix) of this section.

(ii) A request for an extension for compliance, as specified in § 63.1311(e), may be submitted in the Precompliance Report. The request for a compliance extension shall include the data outlined in § 63.6(i)(6)(i)(A), (B), and (D), as required in § 63.1311(e)(1).

(iii) The alternative monitoring parameter information required in paragraph (f) of this section shall be submitted in the Precompliance Report if, for any emission point, the owner or operator of an affected source seeks to comply through the use of a control technique other than those for which monitoring parameters are specified in this subpart or in subpart G of this part or seeks to comply by monitoring a different parameter than those specified in this subpart or in subpart G of this part.

(iv) If the affected source seeks to comply using alternative continuous monitoring and recordkeeping as specified in paragraph (g) of this section, the owner or operator shall submit a request for approval in the Precompliance Report.

(v) The owner or operator shall report the intent to use alternative controls to comply with the provisions of this subpart in the Precompliance Report. The Administrator may deem alternative controls to be equivalent to the controls required by the standard, under the procedures outlined in § 63.6(g).

(vi) If a request for approval to use engineering assessment to estimate emissions from a batch emissions episode, as described in § 63.1323(b)(6)(i)(C) is being made, the information required by § 63.1323(b)(6)(iii)(B) shall be submitted in the Precompliance Report.

(vii) If an owner or operator establishes parameter monitoring levels according to the procedures contained in § 63.1334(c) or (d), the following information shall be submitted in the Precompliance Report:

(A) Identification of which procedures (*i.e.,* § 63.1334(c) or (d)) are to be used; and

(B) A description of how the parameter monitoring level is to be established. If the procedures in § 63.1334(c) are to be used, a description of how performance test data will be used shall be included.

(viii) If the owner or operator is requesting approval to incorporate a provision for ceasing to collect monitoring data, during a start-up, shutdown, or malfunction, into the start-up, shutdown, and malfunction plan, when that monitoring equipment would be damaged if it did not cease to collect monitoring data, the information specified in paragraphs (e)(3)(viii)(A) and (B) shall be supplied in the Precompliance Report or in a supplement to the Precompliance Report. The Administrator shall evaluate the supporting documentation and shall approve the request only if, in the Administrator's judgment, the specific monitoring equipment would be damaged by the contemporaneous start-up, shutdown, or malfunction.

(A) Documentation supporting a claim that the monitoring equipment would be damaged by the contemporaneous start-up, shutdown, or malfunction; and

(B) A request to incorporate such a provision for ceasing to collect monitoring data during a start-up, shutdown, or malfunction, into the start-up, shutdown, and malfunction plan.

(ix) Supplements to the Precompliance Report may be submitted as specified in paragraphs (e)(3)(ix)(A) or (e)(3)(ix)(B) of this section. Unless the Administrator objects to a request submitted in a supplement to the Precompliance Report within 45 days after its receipt, the request shall be deemed approved.

(A) Supplements to the Precompliance Report may be submitted

to clarify or modify information previously submitted.

(B) Supplements to the Precompliance Report may be submitted to request approval to use alternative monitoring parameters, as specified in paragraph (e)(3)(iii) of this section; to use alternative continuous monitoring and recordkeeping, as specified in paragraph (e)(3)(iv) of this section; to use alternative controls, as specified in paragraph (e)(3)(v) of this section; to use engineering assessment to estimate emissions from a batch emissions episode, as specified in paragraph (e)(3)(vi) of this section; to establish parameter monitoring levels according to the procedures contained in § 63.1334(c) or (d), as specified in paragraph (e)(3)(vii) of this section; or to include a provision for ceasing to collect monitoring data during a start-up, shutdown, or malfunction, in the start-up, shutdown, and malfunction plan, when that monitoring equipment would be damaged if it did not cease to collect monitoring data, as specified in paragraph (e)(3)(viii) of this section.

(4) Emissions Averaging Plan. For all existing affected sources using emissions averaging, an Emissions Averaging Plan shall be submitted for approval according to the schedule and procedures described in paragraph (e)(4)(i) of this section. The Emissions Averaging Plan shall contain the information specified in paragraph (e)(4)(ii) of this section, unless the information required in paragraph (e)(4)(ii) of this section is submitted with an operating permit application. An owner or operator of an affected source who submits an operating permit application instead of an Emissions Averaging Plan shall submit the information specified in paragraph (e)(8) of this section. In addition, a supplement to the Emissions Averaging Plan, as required under paragraph (e)(4)(iii) of this section, is to be submitted whenever additional alternative controls or operating scenarios may be used to comply with this subpart. Updates to the Emissions Averaging Plan shall be submitted in accordance with paragraph (e)(4)(iv) of this section.

(i) *Submittal and approval.* The Emissions Averaging Plan shall be submitted no later than September 19, 2000, and it is subject to Administrator approval. If an Emissions Averaging Plan was submitted prior to June 19, 2000 and no changes need to be made to that Emissions Averaging Plan, the owner or operator shall re-submit the earlier plan or submit notification that the previously submitted plan is still valid. The Administrator shall determine within 120 days whether the Emissions Averaging Plan submitted presents sufficient information. The Administrator shall either approve the Emissions Averaging Plan, request changes, or request that the owner or operator submit additional information. Once the Administrator receives sufficient information, the Administrator shall approve, disapprove, or request changes to the plan within 120 days.

(ii) *Information required.* The Emissions Averaging Plan shall contain the information listed in paragraphs (e)(4)(ii)(A) through (e)(4)(ii)(N) of this section for all emission points included in an emissions average.

* * * * *

(B) The required information shall include the projected emission debits and credits for each emission point and the sum for the emission points involved in the average calculated according to § 63.1332. The projected credits shall be greater than or equal to the projected debits, as required under § 63.1332(e)(3).

* * * * *

(D) The required information shall include the specific identification of each emission point affected by a pollution prevention measure. To be considered a pollution prevention measure, the criteria in § 63.1332(j)(1) shall be met. If the same pollution prevention measure reduces or eliminates emissions from multiple emission points in the average, the owner or operator shall identify each of these emission points.

* * * * *

(F) * * *

(*2*) The required documentation shall include the estimated values of all parameters needed for input to the emission debit and credit calculations in § 63.1332(g) and (h). These parameter values shall be specified in the affected source's Emissions Averaging Plan (or operating permit) as enforceable operating conditions. Changes to these parameters shall be reported as required by paragraph (e)(4)(iv) of this section.

* * * * *

(*4*) The required documentation shall include the anticipated nominal efficiency if a control technology achieving a greater percent emission reduction than the efficiency of the reference control technology is or will be applied to the emission point. The procedures in § 63.1332(i) shall be followed to apply for a nominal efficiency, and the report specified in paragraph (e)(7)(ii) of this section shall be submitted with the Emissions Averaging Plan as specified in paragraph (e)(7)(ii)(A) of this section.

(*5*) The required documentation shall include the monitoring plan specified in § 63.122(b), to include the information specified in § 63.120(d)(2)(i) and in either § 63.120(d)(2)(ii) or (d)(2)(iii) for each storage vessel controlled with a closed-vent system using a control device other than a flare.

* * * * *

(H) * * *

(*2*) The required documentation shall include the estimated values of all parameters needed for input to the emission debit and credit calculations in § 63.1332(g) and (h). These parameter values shall be specified in the affected source's Emissions Averaging Plan (or operating permit) as enforceable operating conditions. Changes to these parameters shall be reported as required by paragraph (e)(4)(iv) of this section.

* * * * *

(J) * * *

(*2*) The required documentation shall include the estimated values of all parameters needed for input to the emission debit and credit calculations in § 63.1332(g) and (h). These parameter values shall be specified in the affected source's Emissions Averaging Plan (or operating permit) as enforceable operating conditions. Changes to these parameters shall be reported as required by paragraph (e)(4)(iv) of this section.

* * * * *

(L) * * *

(*2*) The required documentation shall include the estimated values of all parameters needed for input to the wastewater emission credit and debit calculations in § 63.1332(g) and (h). These parameter values shall be specified in the affected source's Emissions Averaging Plan (or operating permit) as enforceable operating conditions. Changes to these parameters shall be reported as required by paragraph (e)(4)(iv) of this section.

* * * * *

(N) The required information shall include documentation of the data required by § 63.1332(k). The documentation shall demonstrate that the emissions from the emission points proposed to be included in the average will not result in greater hazard or, at the option of the Administrator, greater risk to human health or the environment than if the emission points were not included in an emissions average.

(iii) *Supplement to Emissions Averaging Plan.* The owner or operator required to prepare an Emissions Averaging Plan under paragraph (e)(4) of this section shall also prepare a supplement to the Emissions Averaging

Plan for any additional alternative controls or operating scenarios that may be used to achieve compliance.

(iv) *Updates to Emissions Averaging Plan.* The owner or operator of an affected source required to submit an Emissions Averaging Plan under paragraph (e)(4) of this section shall also submit written updates of the Emissions Averaging Plan to the Administrator for approval under the circumstances described in paragraphs (e)(4)(iv)(A) through (e)(4)(iv)(C) of this section unless the relevant information has been included and submitted in an operating permit application or amendment.

(A) The owner or operator who plans to make a change listed in either paragraph (e)(4)(iv)(A)(*1*) or (e)(4)(iv)(A)(*2*) of this section shall submit an Emissions Averaging Plan update at least 120 days prior to making the change.

* * * * *

(B) The owner or operator who has made a change as defined in paragraph (e)(4)(iv)(B)(*1*) or (e)(4)(iv)(B)(*2*) of this section shall submit an Emissions Averaging Plan update within 90 days after the information regarding the change is known to the affected source. The update may be submitted in the next quarterly periodic report if the change is made after the date the Notification of Compliance Status is due.

* * * * *

(C) The Administrator shall approve or request changes to the Emissions Averaging Plan update within 120 days of receipt of sufficient information regarding the change for emission points included in emissions averages.

(5) *Notification of Compliance Status.* For existing and new affected sources, a Notification of Compliance Status shall be submitted. For equipment leaks subject to § 63.1331, the owner or operator shall submit the information required in § 63.182(c) in the Notification of Compliance Status within 150 days after the first applicable compliance date for equipment leaks in the affected source, and an update shall be provided in the first Periodic Report that is due at least 150 days after each subsequent applicable compliance date for equipment leaks in the affected source. For all other emission points, including heat exchange systems, the Notification of Compliance Status shall contain the information listed in paragraphs (e)(5)(i) through (e)(5)(xi) of this section, as applicable, and shall be submitted no later than 150 days after the compliance dates specified in this subpart.

(i) The results of any emission point group determinations, process section applicability determinations, performance tests, inspections, continuous monitoring system performance evaluations, any other information used to demonstrate compliance, values of monitored parameters established during performance tests, and any other information required to be included in the Notification of Compliance Status under §§ 63.1311(m), 63.122, and 63.1314 for storage vessels, § 63.117 for continuous process vents, § 63.146 for process wastewater, §§ 63.1316 through 63.1320 for continuous process vents subject to § 63.1316, § 63.1327 for batch process vents, § 63.1329 for process contact cooling towers, and § 63.1332 for emission points included in an emissions average. In addition, the owner or operator of an affected source shall comply with paragraph (e)(5)(i)(A) and (e)(5)(i)(B) of this section.

(A) For performance tests, group determinations, and process section applicability determinations that are based on measurements, the Notification of Compliance Status shall include one complete test report, as described in paragraph (e)(5)(i)(B) of this section, for each test method used for a particular kind of emission point. For additional tests performed for the same kind of emission point using the same method, the results and any other information, from the test report, that is requested on a case-by-case basis by the Administrator shall be submitted, but a complete test report is not required.

* * * * *

(ii) For each monitored parameter for which a maximum or minimum level is required to be established under § 63.114(e) for continuous process vents, § 63.1324 for batch process vents and aggregate batch vent streams, § 63.143(f) for process wastewater, § 63.1332(m) for emission points in emissions averages, paragraph (e)(8) of this section, or paragraph (f) of this section, the Notification of Compliance Status shall contain the information specified in paragraphs (e)(5)(ii)(A) through (e)(5)(ii)(D) of this section, unless this information has been established and provided in the operating permit application. Further, as described in § 63.1314(a)(9), for those storage vessels for which the monitoring plan required by § 63.1314(a)(9) specifies compliance with the provisions of § 63.1334, the owner or operator shall provide the information specified in paragraphs (e)(5)(ii)(A) through (e)(5)(ii)(D) of this section for each monitored parameter, unless this information has been established and provided in the operating permit application. For those storage vessels for which the monitoring plan required by § 63.1314(a)(9) does not require compliance with the provisions of § 63.1334, the owner or operator shall provide the information specified in § 63.120(d)(3) as part of the Notification of Compliance Status, unless this information has been established and provided in the operating permit application.

* * * * *

(iv) The determination of applicability for flexible operation units as specified in § 63.1310(f).

* * * * *

(vi) The results for each predominant use determination made under § 63.1310(g), for storage vessels assigned to an affected source subject to this subpart.

(vii) The results for each predominant use determination made under § 63.1310(h), for recovery operations equipment assigned to an affected source subject to this subpart.

(viii) For owners or operators of Group 2 batch process vents establishing a batch mass input limitation as specified in § 63.1325(g), the affected source's operating year for purposes of determining compliance with the batch mass input limitation.

(ix) If any emission point is subject to this subpart and to other standards as specified in § 63.1311, and if the provisions of § 63.1311 allow the owner or operator to choose which testing, monitoring, reporting, and recordkeeping provisions will be followed, then the Notification of Compliance Status shall indicate which rule's requirements will be followed for testing, monitoring, reporting, and recordkeeping.

(x) An owner or operator who transfers a Group 1 wastewater stream or residual removed from a Group 1 wastewater stream for treatment pursuant to § 63.132(g) shall include in the Notification of Compliance Status the name and location of the transferee and a description of the Group 1 wastewater stream or residual sent to the treatment facility.

(xi) An owner or operator complying with paragraph (h)(1) of this section shall notify the Administrator of the election to comply with paragraph (h)(1) of this section as part of the Notification of Compliance Status or as part of the appropriate Periodic Report as specified in paragraph (e)(6)(ix) of this section.

(6) *Periodic Reports.* For existing and new affected sources, the owner or operator shall submit Periodic Reports as specified in paragraphs (e)(6)(i)

through (e)(6)(xi) of this section. In addition, for equipment leaks subject to § 63.1331, the owner or operator shall submit the information specified in § 63.182(d) under the conditions listed in § 63.182(d), and for heat exchange systems subject to § 63.1328, the owner or operator shall submit the information specified in § 63.104(f)(2) as part of the Periodic Report required by this paragraph (e)(6). Section 63.1334 shall govern the use of monitoring data to determine compliance for Group 1 emissions points and for Group 1 and Group 2 emission points included in emissions averages with the following exception: As discussed in § 63.1314(a)(9), for storage vessels to which the provisions of § 63.1334 do not apply, as specified in the monitoring plan required by § 63.120(d)(2), the owner or operator is required to comply with the requirements set out in the monitoring plan, and monitoring records may be used to determine compliance.

(i) Except as specified in paragraphs (e)(6)(xi) and (e)(6)(xii) of this section, a report containing the information in paragraph (e)(6)(ii) of this section or containing the information in paragraphs (e)(6)(iii) through (e)(6)(x) of this section, as appropriate, shall be submitted semiannually no later than 60 days after the end of each 6-month period. The first report shall be submitted no later than 240 days after the date the Notification of Compliance Status is due and shall cover the 6-month period beginning on the date the Notification of Compliance Status is due.

(ii) If none of the compliance exceptions specified in paragraphs (e)(6)(iii) through (e)(6)(ix) of this section occurred during the 6-month period, the Periodic Report required by paragraph (e)(6)(i) of this section shall be a statement that there were no compliance exceptions as described in this paragraph for the 6-month period covered by that report and no activities specified in paragraphs (e)(6)(iii) through (e)(6)(ix) of this section occurred during the 6-month period covered by that report.

(iii) * * *

(B) The daily average values or batch cycle daily average values of monitored parameters for both excused excursions, as defined in § 63.1334(g), and unexcused excursions, as defined in § 63.1334(f). For excursions caused by lack of monitoring data, the start-time and duration of periods when monitoring data were not collected shall be specified.

(C) [Reserved]

(D) The information in paragraphs (e)(6)(iii)(D)(*1*) through (e)(6)(iii)(D)(*4*) of this section, as applicable:

* * * * *

(*2*) Notification if a process change is made such that the group status of any emission point changes from Group 2 to Group 1. The owner or operator is not required to submit a notification of a process change if that process change caused the group status of an emission point to change from Group 1 to Group 2. However, until the owner or operator notifies the Administrator that the group status of an emission point has changed from Group 1 to Group 2, the owner or operator is required to continue to comply with the Group 1 requirements for that emission point. This notification may be submitted at any time.

(*3*) Notification if one or more emission point(s) (other than equipment leaks) or one or more TPPU is added to an affected source. The owner or operator shall submit the information contained in paragraphs (e)(6)(iii)(D)(*3*)(*i*) through (e)(6)(iii)(D)(*3*)(*ii*) of this section:

(*i*) A description of the addition to the affected source; and

(*ii*) Notification of the group status of the additional emission point or all emission points in the TPPU.

(*4*) For process wastewater streams sent for treatment pursuant to § 63.132(g), reports of changes in the identity of the treatment facility or transferee.

* * * * *

(iv) For each batch process vent with a batch mass input limitation, every second Periodic Report shall include the mass of HAP or material input to the batch unit operation during the 12-month period covered by the preceding and current Periodic Reports, and a statement of whether the batch process vent was in or out of compliance with the batch mass input limitation.

(v) * * *

(B) For additional tests performed for the same kind of emission point using the same method, results and any other information, pertaining to the performance test, that is requested on a case-by-case basis by the Administrator shall be submitted, but a complete test report is not required.

(vi) Notification of a change in the primary product of a TPPU, in accordance with the provisions in § 63.1310(f). This includes a change in primary product from one thermoplastic product to either another thermoplastic product or to a non-thermoplastic product.

(vii) The results for each change made to a predominant use determination made under § 63.1310(g) for a storage vessel that is assigned to an affected source subject to this subpart after the change. (viii) The Periodic Report shall include the results for each change made to a predominant use determination made under § 63.1310(h) for recovery operations equipment assigned to an affected source subject to this subpart after the change.

(ix) An owner or operator complying with paragraph (h)(1) of this section shall notify the Administrator of the election to comply with paragraph (h)(1) of this section as part of the Periodic Report or as part of the Notification of Compliance Status as specified in paragraph (e)(5)(xi) of this section.

(x) An owner or operator electing not to retain daily average or batch cycle daily average values under paragraph (h)(2) of this section shall notify the Administrator as specified in paragraph (h)(2)(i) of this section.

(xi) The owner or operator of an affected source shall submit quarterly reports for all emission points included in an emissions average as specified in paragraphs (e)(6)(xi)(A) through (e)(6)(xi)(C) of this section.

(A) The quarterly reports shall be submitted no later than 60 days after the end of each quarter. The first report shall be submitted with the Notification of Compliance Status no later than 150 days after the compliance date.

(B) The quarterly reports shall include the information specified in paragraphs (e)(6)(xi)(B)(*1*) through (e)(6)(xi)(B)(*7*) of this section for all emission points included in an emissions average.

(*1*) The credits and debits calculated each month during the quarter;

(*2*) A demonstration that debits calculated for the quarter are not more than 1.30 times the credits calculated for the quarter, as required under § 63.1332(e)(4);

(*3*) The values of any inputs to the debit and credit equations in § 63.1332(g) and (h) that change from month to month during the quarter or that have changed since the previous quarter;

(*4*) Results of any performance tests conducted during the reporting period including one complete report for each test method used for a particular kind of emission point as described in paragraph (e)(6)(v) of this section;

(*5*) Reports of daily average (or batch cycle daily average) values of monitored parameters for excursions as defined in § 63.1334(f);

(*6*) For excursions caused by lack of monitoring data, the duration of periods when monitoring data were not collected shall be specified; and

(*7*) Any other information the affected source is required to report under the operating permit or Emissions Averaging Plan for the affected source.

(C) Every fourth quarterly report shall include the following:

(*1*) A demonstration that annual credits are greater than or equal to annual debits as required by § 63.1332(e)(3); and

(*2*) A certification of compliance with all the emissions averaging provisions in § 63.1332.

(xii) The owner or operator of an affected source shall submit quarterly reports for particular emission points and process sections not included in an emissions average as specified in paragraphs (e)(6)(xii)(A) through (e)(6)(xii)(D) of this section.

(A) The owner or operator of an affected source shall submit quarterly reports for a period of 1 year for an emission point or process section that is not included in an emissions average if:

(*1*) A control or recovery device for a particular emission point or process section has more excursions, as defined in § 63.1334(f), than the number of excused excursions allowed under § 63.1334(g) for a semiannual reporting period; or

(*2*) The Administrator requests that the owner or operator submit quarterly reports for the emission point or process section.

(B) The quarterly reports shall include all information specified in paragraphs (e)(6)(iii) through (e)(6)(ix) of this section applicable to the emission point or process section for which quarterly reporting is required under paragraph (e)(6)(xii)(A) of this section. Information applicable to other emission points within the affected source shall be submitted in the semiannual reports required under paragraph (e)(6)(i) of this section.

(C) Quarterly reports shall be submitted no later than 60 days after the end of each quarter.

(D) After quarterly reports have been submitted for an emission point for 1 year without more excursions occurring (during that year) than the number of excused excursions allowed under § 63.1334(g), the owner or operator may return to semiannual reporting for the emission point or process section.

(*7*) *Other reports.* Other reports shall be submitted as specified in paragraphs (e)(7)(i) through (e)(7)(iv) of this section.

* * * * *

(ii) For owners or operators of affected sources required to request approval for a nominal control efficiency for use in calculating credits for an emissions average, the information specified in § 63.1332(i) shall be submitted as specified in paragraph (e)(7)(ii)(A) or (B) of this section, as appropriate.

(A) If use of a nominal control efficiency is part of the initial Emissions Averaging Plan described in paragraph (e)(4)(ii) of this section, the information in paragraph (e)(7)(ii) of this section shall be submitted with the Emissions Averaging Plan.

(B) If an owner or operator elects to use a nominal control efficiency after submittal of the initial Emissions Averaging Plan as described in paragraph (e)(4)(ii) of this section, the information in paragraph (e)(7)(ii) of this section shall be submitted at the discretion of the owner or operator.

(iii) When the conditions of §§ 63.1310(f)(3)(iii), 63.1310(f)(9), or 63.1310(f)(10)(iii) are met, reports of changes to the primary product for a TPPU or process unit as required by §§ 63.1310(f)(3)(iii), 63.1310(f)(9), or 63.1310(f)(10)(iii)(C), respectively, shall be submitted.

(iv) Owners or operators of TPPU or emission points (other than equipment leak components subject to § 63.1331) that are subject to § 63.1310(i)(1) or (i)(2) shall submit a report as specified in paragraphs (e)(7)(iv)(A) and (B) of this section.

(A) Reports shall include:

(*1*) A description of the process change or addition, as appropriate;

(*2*) The planned start-up date and the appropriate compliance date, according to § 63.1310(i)(1) or (2); and

(*3*) Identification of the group status of emission points (except equipment leak components subject to § 63.1331) specified in paragraphs (e)(7)(iv)(A)(*3*)(*i*) through (e)(7)(iv)(A)(*3*)(*iii*) of this section, as applicable.

(*i*) All the emission points in the added TPPU as described in § 63.1310(i)(1).

(*ii*) All the emission points in an affected source designated as a new affected source under § 63.1310(i)(2)(i).

(*iii*) All the added or created emission points as described in § 63.1310(i)(2)(ii) or (i)(2)(iii).

(*4*) If the owner or operator wishes to request approval to use alternative monitoring parameters, alternative continuous monitoring or recordkeeping, alternative controls, engineering assessment to estimate emissions from a batch emissions episode, or wishes to establish parameter monitoring levels according to the procedures contained in § 63.1334(c) or (d), a Precompliance Report shall be submitted in accordance with paragraph (e)(7)(iv)(B) of this section.

(B) Reports shall be submitted as specified in paragraphs (e)(7)(iv)(B)(*1*) through (e)(7)(iv)(B)(*3*) of this section, as appropriate.

(*1*) Owners or operators of an added TPPU subject to § 63.1310(i)(1) shall submit a report no later than 180 days prior to the compliance date for the TPPU.

(*2*) Owners or operators of an affected source designated as a new affected source under § 63.1310(i)(2)(i) shall submit a report no later than 180 days prior to the compliance date for the affected source.

(*3*) Owners or operators of any emission point (other than equipment leak components subject to § 63.1331) subject to § 63.1310(i)(2)(ii) or (i)(2)(iii) shall submit a report no later than 180 days prior to the compliance date for those emission points.

(*8*) *Operating permit application.* An owner or operator who submits an operating permit application instead of an Emissions Averaging Plan or a Precompliance Report shall include the following information with the operating permit application:

(i) The information specified in paragraph (e)(4) of this section for points included in an emissions average; and

(ii) The information specified in paragraph (e)(3) of this section, Precompliance Report, as applicable.

(f) *Alternative monitoring parameters.* The owner or operator who has been directed by any section of this subpart or any section of another subpart referenced by this subpart, that expressly referenced this paragraph (f) to set unique monitoring parameters, or who requests approval to monitor a different parameter than those specified in § 63.1314 for storage vessels, § 63.1315 or § 63.1317, as appropriate, for continuous process vents, § 63.1321 for batch process vents and aggregate batch vent streams, or § 63.1330 for process wastewater shall submit the information specified in paragraphs (f)(1) through (f)(3) of this section in the Precompliance Report, as required by paragraph (e)(3) of this section. The owner or operator shall retain for a period of 5 years each record required by paragraphs (f)(1) through (f)(3) of this section.

* * * * *

(3) The required information shall include a description of the proposed monitoring, recordkeeping, and reporting system, to include the frequency and content of monitoring, recordkeeping, and reporting. Further, the rationale for the proposed monitoring, recordkeeping, and

reporting system shall be included if either condition in paragraph (f)(3)(i) or (f)(3)(ii) of this section is met:

* * * * *

(g) *Alternative continuous monitoring and recordkeeping.* An owner or operator choosing not to implement the provisions listed in § 63.1315 or § 63.1317, as appropriate, for continuous process vents, § 63.1321 for batch process vents and aggregate batch vent streams, or § 63.1330 for process wastewater, may instead request approval to use alternative continuous monitoring and recordkeeping provisions according to the procedures specified in paragraphs (g)(1) through (g)(4) of this section. Requests shall be submitted in the Precompliance Report as specified in paragraph (e)(3)(iv) of this section, if not already included in the operating permit application, and shall contain the information specified in paragraphs (g)(2)(ii) and (g)(3)(ii) of this section, as applicable.

* * * * *

(3) An owner or operator may request approval to use an automated data compression recording system that does not record monitored operating parameter values at a set frequency, but records all values that meet set criteria for variation from previously recorded values, in accordance with paragraphs (g)(3)(i) and (g)(3)(ii) of this section.

(i) * * *

(A) Measure the operating parameter value at least once during every 15 minute period;

* * * * *

(4) An owner or operator may request approval to use other alternative monitoring systems according to the procedures specified in § 63.8(f)(4).

(h) *Reduced recordkeeping program.* For any parameter with respect to any item of equipment, the owner or operator may implement the recordkeeping requirements specified in paragraph (h)(1) or (h)(2) of this section as alternatives to the continuous operating parameter monitoring and recordkeeping provisions that would otherwise apply under this subpart. The owner or operator shall retain for a period of 5 years each record required by paragraph (h)(1) or (h)(2) of this section, except as otherwise provided in paragraph (h)(1)(vi)(D) of this section.

(1) The owner or operator may retain only the daily average (or batch cycle daily average) value, and is not required to retain more frequent monitored operating parameter values, for a monitored parameter with respect to an item of equipment, if the requirements of paragraphs (h)(1)(i) through (h)(1)(vi) of this section are met. An owner or operator electing to comply with the requirements of paragraph (h)(1) of this section shall notify the Administrator in the Notification of Compliance Status as specified in paragraph (e)(5)(xi) of this section or, if the Notification of Compliance Status has already been submitted, in the Periodic Report immediately preceding implementation of the requirements of paragraph (h)(1) of this section as specified in paragraph (e)(6)(ix) of this section.

* * * * *

(ii) * * *

(B) The running average is based on at least six 1-hour average values; and

* * * * *

(iv) The monitoring system will alert the owner or operator by an alarm or other means, if the running average parameter value calculated under paragraph (h)(1)(ii) of this section reaches a set point that is appropriately related to the established limit for the parameter that is being monitored.

* * * * *

(vi) The owner or operator shall retain the records identified in paragraphs (h)(1)(vi)(A) through (h)(1)(vi)(D) of this section.

* * * * *

(B) A description of the applicable monitoring system(s), and of how compliance will be achieved with each requirement of paragraphs (h)(1)(i) through (h)(1)(v) of this section. The description shall identify the location and format (e.g., on-line storage, log entries) for each required record. If the description changes, the owner or operator shall retain both the current and the most recent superseded description, as provided in paragraph (a) of this section, except as provided in paragraph (h)(1)(vi)(D) of this section.

(C) A description, and the date, of any change to the monitoring system that would reasonably be expected to impair its ability to comply with the requirements of paragraph (h)(1) of this section.

(D) Owners and operators subject to paragraph (h)(1)(vi)(B) of this section shall retain the current description of the monitoring system as long as the description is current. The current description shall, at all times, be retained on-site or be accessible from a central location by computer or other means that provides access within 2 hours after a request. The owner or operator shall retain all superseded descriptions for at least 5 years after the date of their creation. Superseded descriptions shall be retained on-site (or accessible from a central location by computer or other means that provides access within 2 hours after a request) for at least 6 months after their creation. Thereafter, superseded descriptions may be stored off-site.

(2) * * *

(i) If the owner or operator elects not to retain the daily average (or batch cycle daily average) values, the owner or operator shall notify the Administrator in the next Periodic Report as specified in paragraph (e)(6)(x) of this section. The notification shall identify the parameter and unit of equipment.

* * * * *

(iii) The owner or operator shall retain the records specified in paragraphs (h)(1)(i) through (h)(1)(iii) of this section, for the duration specified in paragraph (h) of this section. For any calendar week, if compliance with paragraphs (h)(1)(i) through (h)(1)(iv) of this section does not result in retention of a record of at least one occurrence or measured parameter value, the owner or operator shall record and retain at least one parameter value during a period of operation other than a start-up, shutdown, or malfunction.

* * * * *

54. Revising Tables 1, 2, 6, 7, and 8, and adding Table 9 to Subpart JJJ of Part 63, to read as follows:

TABLE 1 TO SUBPART JJJ OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART JJJ AFFECTED SOURCES

Reference	Applies to subpart JJJ	Explanation
63.1(a)(1)	Yes	§ 63.1312 specifies definitions in addition to or that supersede definitions in § 63.2.
63.1(a)(2)	Yes.	
63.1(a)(3)	Yes	§ 63.1311(g) through (l) and § 63.160(b) identify those standards which may apply in addition to the requirements of subparts JJJ and H of this part, and specify how compliance shall be achieved.

TABLE 1 TO SUBPART JJJ OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART JJJ AFFECTED SOURCES—Continued

Reference	Applies to subpart JJJ	Explanation
63.1(a)(4)	Yes	Subpart JJJ (this table) specifies the applicability of each paragraph in subpart A to subpart JJJ.
63.1(a)(5)	No	[Reserved.]
63.1(a)(6)–63.1(a)(8)	Yes.	
63.1(a)(9)	No	[Reserved.]
63.1(a)(10)	Yes.	
63.1(a)(11)	Yes.	
63.1(a)(12)–63.1(a)(14)	Yes.	
63.1(b)(1)	No	§ 63.1310(a) contains specific applicability criteria.
63.1(b)(2)	Yes.	
63.1(b)(3)	No	§ 63.1310(b) provides documentation requirements for TPPUs not considered affected sources.
63.1(c)(1)	Yes	Subpart JJJ (this table) specifies the applicability of each paragraph in subpart A to subpart JJJ.
63.1(c)(2)	No	Area sources are not subject to subpart JJJ.
63.1(c)(3)	No	[Reserved.]
63.1(c)(4)	Yes.	
63.1(c)(5)	Yes	Except that affected sources are not required to submit notifications that are not required by subpart JJJ.
63.1(d)	No	[Reserved.]
63.1(e)	Yes.	
63.2	Yes	§ 63.1312 specifies those subpart A definitions that apply to subpart JJJ.
63.3	Yes.	
63.4(a)(1)–63.4(a)(3)	Yes.	
63.4(a)(4)	No	[Reserved.]
63.4(a)(5)	Yes.	
63.4(b)	Yes.	
63.4(c)	Yes.	
63.5(a)(1)	Yes	Except the terms ''source'' and ''stationary source'' should be interpreted as having the same meaning as ''affected source.''
63.5(a)(2)	Yes.	
63.5(b)(1)	Yes	Except § 63.1310(i) defines when construction or reconstruction is subject to new source standards.
63.5(b)(2)	No	[Reserved.]
63.5(b)(3)	Yes.	
63.5(b)(4)	Yes	Except that the Initial Notification and § 63.9(b) requirements do not apply.
63.5(b)(5)	Yes.	
63.5(b)(6)	Yes	Except that § 63.1310(i) defines when construction or reconstruction is subject to new source standards.
63.5(c)	No	[Reserved.]
63.5(d)(1)(i)	Yes	Except that the references to the Initial Notification and § 63.9(b)(5) do not apply.
63.5(d)(1)(ii)	Yes	Except that § 63.5(d)(1)(ii)(H) does not apply.
63.5(d)(1)(iii)	No	§§ 63.1335(e)(5) and 63.1331(a)(4) specify Notification of Compliance Status requirements.
63.5(d)(2)	No.	
63.5(d)(3)	Yes	Except § 63.5(d)(3)(ii) does not apply, and equipment leaks subject to § 63.1331 are exempt.
63.5(d)(4)	Yes.	
63.5(e)	Yes.	
63.5(f)(1)	Yes.	
63.5(f)(2)	Yes	Except that where § 63.9(b)(2) is referred to, the owner or operator need not comply.
63.6(a)	Yes.	
63.6(b)(1)	No	The dates specified in § 63.1311(b) apply, instead.
63.6(b)(2)	No.	
63.6(b)(3)	No.	
63.6(b)(4)	No.	
63.6(b)(5)	No.	
63.6(b)(6)	No	[Reserved.]
63.6(b)(7)	No.	
63.6(c)(1)	Yes	Except that § 63.1311 specifies the compliance date.
63.6(c)(2)	No.	
63.6(c)(3)	No	[Reserved.]
63.6(c)(4)	No	[Reserved.]
63.6(c)(5)	Yes.	
63.6(d)	No	[Reserved.]
63.6(e)	Yes	Except as otherwise specified for individual paragraphs. Does not apply to Group 2 emission points, unless they are included in an emissions average.[a]
63.6(e)(1)(i)	No	This is addressed by § 63.1310(j)(4).

TABLE 1 TO SUBPART JJJ OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART JJJ AFFECTED SOURCES—Continued

Reference	Applies to subpart JJJ	Explanation
63.6(e)(1)(ii)	Yes.	
63.6(e)(1)(iii)	Yes.	
63.6(e)(2)	Yes.	
63.6(e)(3)(i)	Yes	For equipment leaks (subject to § 63.1331), the start-up, shutdown, and malfunction plan requirement of § 63.6(e)(3)(i) is limited to control devices and is optional for other equipment. The start-up, shutdown, malfunction plan may include written procedures that identify conditions that justify a delay of repair.
63.6(e)(3)(i)(A)	No	This is addressed by § 63.1310(j)(4).
63.6(e)(3)(i)(B)	Yes	
63.6(e)(3)(i)(C)	Yes.	
63.6(e)(3)(ii)	Yes	
63.3(e)(3)(iii)	No	Recordkeeping and reporting are specified in § 63.1335(b)(1).
63.6(e)(3)(iv)	No	Recordkeeping and reporting are specified in § 63.1335(b)(1).
63.6(e)(3)(v)	Yes.	
63.6(e)(3)(vi)	Yes.	
63.6(e)(3)(vii)	Yes.	
63.6(e)(3)(vii) (A)	Yes.	
63.6(e)(3)(vii) (B)	Yes	Except the plan shall provide for operation in compliance with § 63.1310(j)(4).
63.6(e)(3)(vii) (C)	Yes.	
63.6(e)(3)(viii)	Yes.	
63.6(f)(1)	Yes.	
63.6(f)(2)	Yes	Except § 63.7(c), as referred to in § 63.6(f)(2)(iii)(D), does not apply, and except that § 63.6(f)(2)(ii) does not apply to equipment leaks subject to § 63.1331.
63.6(f)(3)	Yes.	
63.6(g)	Yes.	
63.6(h)	No	Subpart JJJ does not require opacity and visible emission standards.
63.6(i)(1)	Yes.	
63.6(i)(2)	Yes.	
63.6(i)(3)	Yes.	
63.6(i)(4)(i)(A)	Yes.	
63.6(i)(4)(i)(B)	No	Dates are specified in § 63.1311(e) and § 63.1335(e)(3)(i).
63.6(i)(4)(ii)	No.	
63.6(i)(5)–(14)	Yes.	
63.6(i)(15)	No	[Reserved.]
63.6(i)(16)	Yes.	
63.6(j)	Yes.	
63.7(a)(1)	Yes.	
63.7(a)(2)	No	§ 63.1335(e)(5) specifies the submittal dates of performance test results for all emission points except equipment leaks; for equipment leaks, compliance demonstration results are reported in the Periodic Reports.
63.7(a)(3)	Yes.	
63.7(b)	No	§ 63.1333(a)(4) specifies notification requirements.
63.7(c)	No.	
63.7(d)	Yes.	
63.7(e)(1)	Yes	Except that all performance tests shall be conducted at maximum representative operating conditions achievable at the time without disruption of operations or damage to equipment.
63.7(e)(2)	Yes.	
63.7(e)(3)	No	Subpart JJJ specifies requirements.
63.7(e)(4)	Yes.	
63.7(f)	Yes	Except that § 63.144(b)(5)(iii)(A) and (B) shall apply for process wastewater. Also, because a site specific test plan is not required, the notification deadline in § 63.7(f)(2)(i) shall be 60 days prior to the performance test, and in § 63.7(f)(3), approval or disapproval of the alternative test method shall not be tied to the site specific test plan.
63.7(g)	Yes	Except that the requirements in § 63.1335(e)(5) shall apply instead of references to the Notification of Compliance Status report in § 63.9(h). In addition, equipment leaks subject to § 63.1331 are not required to conduct performance tests.
63.7(h)	Yes	Except § 63.7(h)(4)(ii) is not applicable, because the site-specific test plans in § 63.7(c)(2) are not required.
63.8(a)(1)	Yes.	
63.8(a)(2)	No.	
63.8(a)(3)	No	[Reserved.]
63.8(a)(4)	Yes.	
63.8(b)(1)	Yes.	
63.8(b)(2)	No	Subpart JJJ specifies locations to conduct monitoring.
63.8(b)(3)	Yes.	
63.8(c)(1)	Yes.	

TABLE 1 TO SUBPART JJJ OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART JJJ AFFECTED SOURCES—Continued

Reference	Applies to subpart JJJ	Explanation
63.8(c)(1)(i)	Yes.	
63.8(c)(1)(ii)	No	For all emission points except equipment leaks, comply with § 63.1335(b)(1)(i)(B); for equipment leaks, comply with § 63.181(g)(2)(iii).
63.8(c)(1)(iii)	Yes.	
63.8(c)(2)	Yes.	
63.8(c)(3)	Yes.	
63.8(c)(4)	No	§ 63.1334 specifies monitoring frequency; not applicable to equipment leaks because § 63.1331 does not require continuous monitoring systems.
63.8(c)(5)–63.8(c)(8)	No.	
63.8(d)	No.	
63.8(e)	No.	
63.8(f)(1)–63.8(f)(3)	Yes.	
63.8(f)(4)(i)	No	Timeframe for submitting request is specified in § 63.1335(f) or (g); not applicable to equipment leaks because § 63.1331 (through reference to subpart H) specifies acceptable alternative methods.
63.8(f)(4)(ii)	No	Contents of request are specified in § 63.1335(f) or (g).
63.8(f)(4)(iii)	No.	
63.8(f)(5)(i)	Yes.	
63.8(f)(5)(ii)	No.	
63.8(f)(5)(iii)	Yes.	
63.8(f)(6)	No	Subpart JJJ does not require continuous emission monitors.
63.8(g)	No	Data reduction procedures specified in § 63.1335(d) and (h); not applicable to equipment leaks.
63.9(a)	Yes.	
63.9(b)	No	Subpart JJJ does not require an initial notification.
63.9(c)	Yes.	
63.9(d)	Yes.	
63.9(e)	No	§ 63.1333(a)(4) specifies notification deadline.
63.9(f)	No	Subpart JJJ does not require opacity and visible emission standards.
63.9(g)	No.	
63.9(h)	No	§ 63.1335(e)(5) specifies Notification of Compliance Status requirements.
63.9(i)	Yes.	
63.9(j)	No.	
63.10(a)	Yes.	
63.10(b)(1)	No	§ 63.1335(a) specifies record retention requirements.
63.10(b)(2)	No	Subpart JJJ specifies recordkeeping requirements.
63.10(b)(3)	No	§ 63.1310(b) requires documentation of sources that are not affected sources.
63.10(c)	No	§ 63.1335 specifies recordkeeping requirements.
63.10(d)(1)	Yes.	
63.10(d)(2)	No	§ 63.1335(e) specifies performance test reporting requirements; not applicable to equipment leaks.
63.10(d)(3)	No	Subpart JJJ does not require opacity and visible emission standards.
63.10(d)(4)	Yes.	
63.10(d)(5)(i)	Yes	Except that reports required by § 63.10(d)(5)(i) may be submitted at the same time as Periodic Reports specified in § 63.1335(e)(6). The start-up, shutdown, and malfunction plan, and any records or reports of start-up, shutdown, and malfunction do not apply to Group 2 emission points unless they are included in an emissions average.
63.10(d)(5)(ii)	No.	
63.10(e)	No	§ 63.1335 specifies reporting requirements.
63.10(f)	Yes.	
63.11	Yes	Except that instead of § 63.11(b), § 63.1333(e) shall apply.
63.12	Yes	Except that the authority of § 63.1332(i) and the authority of § 63.177 (for equipment leaks) shall not be delegated to States.
63.13–63.15	Yes.	

[a] The plan and any records or reports of start-up, shutdown, and malfunction do not apply to Group 2 emission points unless they are included in an emissions average.

TABLE 2 TO SUBPART JJJ OF PART 63.—GROUP 1 STORAGE VESSELS AT EXISTING AFFECTED SOURCES

Vessel capacity (cubic meters)	Vapor pressure [a] (kilopascals)
75≤capacity 151	≥13.1
151≤capacity	≥5.2

[a] Maximum true vapor pressure of total organic HAP at storage temperature.

TABLE 6 TO SUBPART JJJ OF PART 63.—KNOWN ORGANIC HAP EMITTED FROM THE PRODUCTION OF THERMOPLASTIC PRODUCTS

Thermoplastic product/ subcategory	Organic HAP/chemical name (CAS No.)						
	Acetaldehyde (75–07–0)	Acrylonitrile (107–13–1)	1,3 Butadiene (106–99-0)	1,4-Dioxane (123–91-1)	Ethylene Glycol (107–21-1)	Methanol (67–56-1)	Styrene (100–42-5)
ABS latex		✔	✔				✔
BS using a batch emulsion process		✔	✔				✔
ABS using a batch suspension process		✔	✔				✔
ABS using a continuous emulsion process		✔	✔				✔
ABS using a continuous mass process		✔	✔				✔
ASA/AMSAN		✔					✔
EPS							✔
MABS							✔
BS			✔				✔
Nitrile resin		✔					
PET using a batch dimethyl terephthalate process	✔			✔	✔	✔	
PET using a batch terephthalic acid process	✔			✔	✔		
PET using a continuous dimethyl terephthalate process	✔			✔	✔	✔	
PET using a continuous terephthalic acid process	✔			✔	✔		
PET using a continuous terephthalic acid high viscosity multiple end finisher process	✔			✔	✔		
Polystyrene resin using a batch process							✔
Polystyrene resin using a continuous process							✔
SAN using a batch process		✔					✔
SAN using a continuous process		✔					✔

CAS No. = Chemical Abstract Service Number.
ABS = Acrylonitrile butadiene styrene resin.
ASA/AMSAN = Acrylonitrile styrene resin/alpha methyl styrene acrylonitrile resin.
EPS = expandable polystyrene resin.
MABS = methyl methacrylate acrylonitrile butadiene styrene resin.
PET = poly(ethylene terephthalate) resin.
SAN = styrene acrylonitrile resin.
MBS = methyl methacrylate butadiene styrene resin.

TABLE 7 OF SUBPART JJJ OF PART 63.—GROUP 1 BATCH PROCESS VENTS AND AGGREGATE BATCH VENT STREAMS—MONITORING, RECORDKEEPING, AND REPORTING REQUIREMENTS

Control device	Parameters to be monitored	Recordkeeping and reporting requirements for monitored parameters
Thermal incinerator	Firebox temperature [a]	1. Continuous records as specified in § 63.1326(e)(1).[b] 2. Record and report the average firebox temperature measured during the performance test—NCS.[c] 3. Record the batch cycle daily average firebox temperature as specified in § 63.1326(e)(2). 4. Report all batch cycle daily average temperatures that are below the minimum operating value established in the NCS or operating permit and all instances when monitoring data are not collected—PR.[d, e]
Catalytic incinerator	Temperature upstream and downstream of the catalyst bed.	1. Continuous records as specified in § 63.1326(e)(1).[b] 2. Record and report the average upstream and downstream temperatures and the average temperature difference across the catalyst bed measured during the performance test—NCS.[c] 3. Record the batch cycle daily average upstream temperature and temperature difference across catalyst bed as specified in § 63.1326(e)(2). 4. Report all batch cycle daily average upstream temperatures that are below the minimum upstream value established in the NCS or operating permit—PR.[d, e] 5. Report all batch cycle daily average temperature differences across the catalyst bed that are below the minimum difference established in the NCS or operating permit—PR.[d,e] 6. Report all instances when monitoring data are not collected.[e]
Boiler or Process Heater with a design heat input capacity less than 44 megawatts and where the batch process vents or aggregate batch vent streams are *not* introduced with or used as the primary fuel.	Firebox temperature [a]	1. Continuous records as specified in § 63.1326(e)(1).[b] 2. Record and report the average firebox temperature measured during the performance test—NCS[c] 3. Record the batch cycle daily average firebox temperature as specified in § 63.1326(e)(2).[d] 4. Report all batch cycle daily average temperatures that are below the minimum operating value established in the NCS or operating permit and all instances when monitoring data are not collected—PR.[d e]
Flare	Presence of a flame at the pilot light.	1. Hourly records of whether the monitor was continuously operating during batch emission episodes, or portions thereof, selected for control and whether a flame was continuously present at the pilot light during said periods. 2. Record and report the presence of a flame at the pilot light over the full period of the compliance determination—NCS.[c] 3. Record the times and durations of all periods during batch emission episodes, or portions thereof, selected for control when all flames at the pilot light of a flare are absent or the monitor is not operating. 4. Report the times and durations of all periods during batch emission episodes, or portions thereof, selected for control when all flames at the pilot light of a flare are absent—PR.[d]
Scrubber for halogenated batch process vents or aggregate batch vent streams (Note: Controlled by a combustion device other than a flare).	pH of scrubber effluent, and.	1. Continuous records as specified in § 63.1326(e)(1). [b] 2. Record and report the average pH of the scrubber effluent measured during the performance test—NCS.[c] 3. Record the batch cycle daily average pH of the scrubber effluent as specified in § 63.1326(e)(2). 4. Report all batch cycle daily average pH values of the scrubber effluent that are below the minimum operating value established in the NCS or operating permit and all instances when monitoring data are not collected—PR.[d thnsp;e]
Scrubber for halogenated batch process vents or aggregate batch vent streams (Note: Controlled by a combustion device other than a flare).	Scrubber liquid and gas flow rates [§ 63.1324(b)(4)(ii)].	1. Records as specified in § 63.1326(e)(1). [b] 2. Record and report the scrubber liquid/gas ratio averaged over the full period of the performance test—NCS.[c] 3. Record the batch cycle daily average scrubber liquid/gas ratio as specified in § 63.1326(e)(2).

TABLE 7 OF SUBPART JJJ OF PART 63.—GROUP 1 BATCH PROCESS VENTS AND AGGREGATE BATCH VENT STREAMS—MONITORING, RECORDKEEPING, AND REPORTING REQUIREMENTS—Continued

Control device	Parameters to be monitored	Recordkeeping and reporting requirements for monitored parameters
		4. Report all batch cycle daily average scrubber liquid/gas ratios that are below the minimum value established in the NCS or operating permit and all instances when monitoring data are not collected—PR.[d, e]
Absorber[f]	Exit temperature of the absorbing liquid, and.	1. Continuous records as specified in § 63.1326(e)(1).[b]
		2. Record and report the average exit temperature of the absorbing liquid measured during the performance test—NCS.[c]
		3. Record the batch cycle daily average exit temperature of the absorbing liquid as specified in § 63.1326(e)(2) for each batch cycle.
		4. Report all the batch cycle daily average exit temperatures of the absorbing liquid that are below the minimum operating value established in the NCS or operating permit and all instances when monitoring data are not collected—PR.[d, e]
Absorber[f]	Exit specific gravity for the absorbing liquid.	1. Continuous records as specified in § 63.1326(e)(1).[b]
		2. Record and report the average exit specific gravity measured during the performance test—NCS.[c]
		3. Record the batch cycle daily average exit specific gravity as specified in § 63.1326(e)(2).
		4. Report all batch cycle daily average exit specific gravity values that are below the minimum operating value established in the NCS or operating permit and all instances when monitoring data are not collected—PR.[d, e]
Condenser[f]	Exit (product side) temperature.	1. Continuous records as specified in § 63.1326(e)(1).[b]
		2. Record and report the average exit temperature measured during the performance test—NCS.[c]
		3. Record the batch cycle daily average exit temperature as specified in § 63.1326(e)(2).
		4. Report all batch cycle daily average exit temperatures that are above the maximum operating value established in the NCS or operating permit and all instances when monitoring data are not collected—PR.[d, e]
Carbon Adsorber[f]	Total regeneration steam flow or nitrogen flow, or pressure (gauge or absolute) during carbon bed regeneration cycle(s), and.	1. Record the total regeneration steam flow or nitrogen flow, or pressure for each carbon bed regeneration cycle.
		2. Record and report the total regeneration steam flow or nitrogen flow, or pressure during each carbon bed regeneration cycle measured during the performance test—NCS.[c]
		3. Report all carbon bed regeneration cycles when the total regeneration steam flow or nitrogen flow, or pressure is above the maximum value established in the NCS or operating permit—PR.[d, e]
Carbon Adsorber	Temperature of the carbon bed after regeneration and within 15 minutes of completing any cooling cycle(s).	1. Record the temperature of the carbon bed after each regeneration and within 15 minutes of completing any cooling cycle(s).
		2. Record and report the temperature of the carbon bed after each regeneration and within 15 minutes of completing any cooling cycles(s) measured during the performance test—NCS.[c]
		3. Report all carbon bed regeneration cycles when the temperature of the carbon bed after regeneration, or within 15 minutes of completing any cooling cycle(s), is above the maximum value established in the NCS or operating permit—PR.[d, e]
All control devices	Diversion to the atmosphere from the control device or.	1. Hourly records of whether the flow indicator was operating during batch emission episodes, or portions thereof, selected for control and whether a diversion was detected at any time during said periods as specified in § 63.1326(e)(3).

TABLE 7 OF SUBPART JJJ OF PART 63.—GROUP 1 BATCH PROCESS VENTS AND AGGREGATE BATCH VENT STREAMS—MONITORING, RECORDKEEPING, AND REPORTING REQUIREMENTS—Continued

Control device	Parameters to be monitored	Recordkeeping and reporting requirements for monitored parameters
		2. Record and report the times of all periods during batch emission episodes, or portions thereof, selected for control when emissions are diverted through a bypass line or the flow indicator is not operating—PR.[d]
All control devices	Monthly inspections of sealed valves.	1. Records that monthly inspections were performed as specified in § 63.1326(e)(4)(i). 2. Record and report all monthly inspections that show the valves are in the diverting position or that a seal has been broken—PR.[d]
Absorber, Condenser, and Carbon Adsorber (as an alternative to the requirements previously presented in this table).	Concentration level or reading indicated by an organic monitoring device at the outlet of the control device.	1. Continuous records as specified in § 63.1326(e)(1).[b] 2. Record and report the average batch vent concentration level or reading measured during the performance test—NCS.[c] 3. Record the batch cycle daily average concentration level or reading as specified in § 63.1326(e)(2). 4. Report all batch cycle daily average concentration levels or readings that are above the maximum value established in the NCS or operating permit and all instances when monitoring data are not collected—PR.[d, e]

[a] Monitor may be installed in the firebox or in the ductwork immediately downstream of the firebox before any substantial heat exchange is encountered.
[b] ''Continuous records''; is defined in § 63.111.
[c] NCS = Notification of Compliance Status described in § 63.1335(e)(5).
[d] PR = Periodic Reports described in § 63.1335(e)(6).
[e] The periodic reports shall include the duration of periods when monitoring data are not collected as specified in § 63.1335(e)(6)(iii)(C).
[f] Alternatively, these devices may comply with the organic monitoring device provisions listed at the end of this table.

TABLE 8 TO SUBPART JJJ OF PART 63—OPERATING PARAMETERS FOR WHICH LEVELS ARE REQUIRED TO BE ESTABLISHED FOR CONTINUOUS AND BATCH PROCESS VENTS AND AGGREGATE BATCH VENT STREAMS

Device	Parameters to be monitored	Established operating parameter(s)
Thermal incinerator	Firebox temperature	Minimum temperature.
Catalytic incinerator	Temperature upstream and downstream of the catalyst bed.	Minimum upstream temperature; and minimum temperature difference across the catalyst bed.
Boiler or process heater	Firebox temperature	Minimum temperature.
Scrubber for halogenated vents	pH of scrubber effluent; and scrubber liquid and gas flow rates [§ 63.1324(b)(4)(ii)].	Minimum pH; and minimum liquid/gas ratio.
Absorber	Exit temperature of the absorbing liquid; and exit specific gravity of the absorbing liquid.	Maximum temperature; and maximum specific gravity.
Condenser	Exit temperature	Maximum temperature.
Carbon adsorber	Total regeneration steam flow or nitrogen flow, or pressure (gauge or absolute)[a] during carbon bed regeneration cycle; and temperature of the carbon bed after regeneration (and within 15 minutes of completing any cooling cycle(s)).	Maximum flow or pressure; and maximum temperature.
Other devices (or as an alternate to the requirements previously presented in this table)[b].	HAP concentration level or reading at outlet of device.	Maximum HAP concentration or reading.

[a] 25 to 50 mm (absolute) is a common pressure level obtained by pressure swing absorbers.
[b] Concentration is measured instead of an operating parameter.

TABLE 9 OF SUBPART JJJ OF PART 63—ROUTINE REPORTS REQUIRED BY THIS SUBPART

Reference	Description of report	Due date
§ 63.1335(b) and Subpart A	Refer to Table 1 and Subpart A	Refer to Subpart A
63.1335(e)(3)	Precompliance Report[a]	Existing affected sources—12 months prior to the compliance date. New affected sources—with application for approval of construction or reconstruction.
63.1335(e)(4)	Emissions Averaging Plan	18 months prior to the compliance date.
63.1335(e)(4)(iv)	Updates to Emissions Averaging Plan	120 days prior to making the change necessitating the update.

TABLE 9 OF SUBPART JJJ OF PART 63—ROUTINE REPORTS REQUIRED BY THIS SUBPART—Continued

Reference	Description of report	Due date
63.1335(e)(5)	Notification of Compliance Status [b]	Within 150 days after the compliance date.
63.1335(e)(6)	Periodic Reports	Semiannually, no later than 60 days after the end of each 6-month period. See § 63.1335(e)(6)(i) for the due date for the first report.
63.1335(e)(6)(xi)	Quarterly reports for Emissions Averaging	No later than 60 days after the end of each quarter. First report is due with the Notification of Compliance Status.
63.1335(e)(6)(xii)	Quarterly reports upon request of the Administrator.	No later than 60 days after the end of each quarter.
63.1335(e)(7)(i)	Storage Vessels Notification of Inspection	At least 30 days prior to the refilling of each storage vessel or the inspection of each storage vessel.
63.1335(e)(7)(ii)	Requests for Approval of a Nominal Control Efficiency for Use in Emissions Averaging.	Initial submittal is due with the Emissions Averaging Plan specified in § 63.1335(e)(4)(ii); later submittals are made at the discretion of the owner or operator as specified in § 63.1335(e)(7)(ii) (B).
63.1335(e)(7)(iii)	Notification of Change in the Primary Product	For Notification under § 63.1310(f)(3)(ii)—notification submittal date at the discretion of the owner or operator.[c] For Notification under § 63.1310(f)(4)(ii)—within 6 months of making the determination.

[a] There may be two versions of this report due at different times; one for equipment subject to § 63.1331 and one for other emission points subject to this subpart.

[b] There will be two versions of this report due at different times; one for equipment subject to § 63.1331 and one for other emission points subject to this subpart.

[c] Note that the TPPU remains subject to this subpart until the notification under § 63.1310(f)(3)(i) is made.

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Federal Register

Monday,

June 19, 2000

Part III

Department of Commerce

Bureau of Export Administration

Department of Transportation

15 CFR Part 730, et al.

44 CFR Part 403

Easing of Export Restrictions on North Korea; Final Rules

Department of the Treasury

Office of Foreign Assets Control

31 CFR Part 500

Foreign Assets Control Regulations in North Korea; Final Rule

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 730, 732, 736, 738, 740, 742, 744, 746, 758, and 774

[Docket No. 000605165–0165–01]

RIN 0694–AC10

Easing of Export Restrictions on North Korea

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Interim rule with request for comments.

SUMMARY: The Bureau of Export Administration (BXA) is amending the Export Administration Regulations (EAR) to implement the President's statement of September 17, 1999 easing sanctions against North Korea. The United States is taking this action in order to pursue improved overall relations.

DATES: This rule is effective June 19, 2000. Comments must be received no later than July 19, 2000.

ADDRESSES: Written comments should be sent to Kirsten Mortimer, Regulatory Policy Division, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: James A. Lewis, Director, Office of Strategic Trade, at (202) 482–0092.

SUPPLEMENTARY INFORMATION:

Background

On September 17, 1999, the President announced his decision to ease sanctions against North Korea. The United States is taking this action, which is consistent with the 1994 Agreed Framework and the 1999 Perry Report, in order to pursue improved overall relations.

Under this new policy, most items subject to the EAR designated as EAR99 may be exported or reexported to North Korea without a license. In addition, BXA is changing the licensing policy for certain items on the Commerce Control List (CCL) destined to North Korean civil end-users from a policy of denial to case-by-case review.

This regulation adds certain categories of items to the CCL for which a license will be required to North Korea. Consequently, this regulation identifies certain Export Control Classification Numbers (ECCNs) that are controlled for anti-terrorism (AT) reasons to North Korea only. These new ECCNs do not refer to any column on the Country Chart and therefore exporters are not required to consult the Country Chart in Supplement No. 1 to part 738 to determine licensing requirements for these entries.

This easing of sanctions does not affect U.S. anti-terrorism or nonproliferation export controls on North Korea, including end-user and end-use controls maintained under the Enhanced Proliferation Control Initiative. This does not relieve exporters or reexporters of their obligations under General Prohibition 5 in § 736.2(b)(5) of the EAR which provides that, ''you may not, without a license, knowingly export or reexport any item subject to the EAR to an end-user or end-use that is prohibited by part 744 of the EAR.'' BXA strongly urges the use of Supplement No. 3 to part 732 of the EAR, ''BXA's ''Know Your Customer'' Guidance and Red Flags'' when exporting or reexporting to North Korea.

This rule does not affect the export license denial policy imposed under the Arms Export Control Act, as amended, and the Export Administration Act of 1979, as amended, in place against Changgwang Sinyong Corporation and its subunits, successors, and affiliated companies, and certain sectors of North Korean government-related activity, set forth in 63 FR 24585 (May 4, 1998) and more recently in 65 FR 20239 (April 14, 2000). This license denial policy requires BXA to deny license applications submitted for exports to Changgwang Sinyong Corporation and the related entities listed above. This entity is not on the Entity List (see Supp. No. 4 to part 744) and does not appear on the list of projects in Supp. No. 1 to part 740 which have the effect of triggering a license requirement for items subject to the EAR (e.g., including all items classified as EAR99).

Although the Export Administration Act (EAA) expired on August 20, 1994, the President invoked the International Emergency Economic Powers Act and continued in effect the EAR, and, to the extent permitted by law, the provisions of the EAA in Executive Order 12924 of August 19, 1994, as extended by the President's notices of August 15, 1995 (60 FR 42767), August 14, 1996 (61 FR 42527), August 13, 1997 (62 FR 43629), August 13, 1998 (63 FR 44121), and August 10, 1999 (64 F.R. 44101).

Rulemaking Requirements

1. This interim rule has been determined to be not significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection of information displays a currently valid OMB Control Number. This rule involves collections of information subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) These collections have been approved by the Office of Management and Budget under control number 0694–0088.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States. *See* 5 U.S.C. 553(a)(1). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this interim rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 5 U.S.C. or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

However, because of the importance of the issues raised by these regulations, this rule is issued in interim form and comments will be considered in the development of final regulations. Accordingly, the Department encourages interested persons who wish to comment to do so at the earliest possible time to permit the fullest consideration of their views.

The period for submission of comments will close July 19, 2000. The Department will consider all comments received before the close of the comment period in developing final regulations. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. The Department will not accept public comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the person submitting the comments and will not consider them in the development of final regulations. All public comments on these regulations will be a matter of public record and

will be available for public inspection and copying. In the interest of accuracy and completeness, the Department requires comments in written form.

Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying. Communications from agencies of the United States Government or foreign governments will not be made available for public inspection.

The public record concerning these regulations will be maintained in the Bureau of Export Administration Freedom of Information Records Inspection Facility, Room 6881, Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in part 4 of title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from the Bureau of Export Administration Freedom of Information Officer, at the above address or by calling (202) 482–0500.

List of Subjects

15 CFR Part 730

Administrative practice and procedure, Advisory committees, Exports, Foreign trade, Reporting and recordkeeping requirements, Strategic and critical materials.

15 CFR Parts 732, 740 and 758

Administrative practice and procedure, Exports, Foreign trade, Reporting and Recordkeeping requirements.

15 CFR Parts 736, 742 and 774

Exports, Foreign trade.

15 CFR Part 738

Administrative practice and procedure, Exports, Foreign trade.

15 CFR Part 744

Exports, Foreign trade, Reporting and recordkeeping requirements.

15 CFR Part 746

Embargoes, Exports, Foreign trade, Reporting and recordkeeping requirements.

Accordingly, parts 730, 732, 736, 738, 740, 742, 744, 746, 758, and 774 of the Export Administration Regulations (15 CFR parts 730 through 799) are amended as follows:

1. The authority citation for part 730 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c; 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; E.O. 11912, 41 FR 15825, 3 CFR, 1976 Comp., p. 114; E.O. 12002, 42 FR 35623, 3 CFR, 1977 Comp., p.133; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12214, 45 FR 29783, 3 CFR, 1980 Comp., p. 256; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12854, 58 FR 36587, 3 CFR, 1993 Comp., p. 179; E.O. 12867, 58 FR 51747, 3 CFR, 1993 Comp., p. 649; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12981, 60 FR 62981, 3 CFR, 1995 Comp., p. 419; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp. p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; Notice of November 12, 1998, 63 FR 63589, 3 CFR, 1998 Comp., p. 305; Notice of August 10, 1999, 64 FR 44101, 3 CFR, 1999 Comp., p. 302.

2. The authority citation for part 732 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; Notice of August 10, 1999, 64 FR 44101, 3 CFR, 1999 Comp., p. 302.

3. The authority citation for part 736 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12924, 59 FR 43437 CFR, 1994 Comp., p. 917; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; Notice of August 10, 1999, 64 FR 44101, 3 CFR, 1999 Comp., p. 302.

4. The authority citation for part 738 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c; 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; Notice of August 10, 1999, 64 FR 44101, 3 CFR, 1999 Comp., p. 302.

5. The authority citation for part 740 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; Notice of August 10, 1999, 64 FR 44101, 3 CFR, 1999 Comp., p. 302.

6. The authority citation for part 742 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; Notice of November 12, 1998, 63 FR 63589, 3 CFR, 1998 Comp., p. 305; Notice of August 10, 1999, 64 FR 44101, 3 CFR, 1999 Comp., p. 302.

7. The authority citation for part 744 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; Notice of November 12, 1998, 63 FR 63589, 3 CFR, 1998 Comp., p. 305; Notice of August 10, 1999, 64 FR 44101, 3 CFR, 1999 Comp., p. 302.

8. The authority citation for part 746 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 287c; 22 U.S.C. 6004; E.O. 12854, 58 FR 36587, 3 CFR 1993 Comp., p. 614; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p.917; E.O. 13088, 63 FR 32109, 3 CFR, 1998 Comp., p. 191; E.O. 13121 of April 30, 1999, 64 FR 24021 (May 5, 1999); Notice of August 10, 1999, 64 FR 44101, 3 CFR, 1999 Comp., p. 302.

9. The authority citation for part 758 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; Notice of August 10, 1999, 64 FR 44101, 3 CFR, 1999 Comp., p. 302.

10. The authority citation for 15 CFR part 774 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.*, 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; Notice of August 10, 1999, 64 FR 44101, 3 CFR, 1999 Comp., p. 302.

PART 730—[AMENDED]

11. Supplement No. 3 to Part 730 is amended by removing the next to last entry entitled ''Prohibition of Movement of American Carriers and Prohibition on Transportation of Goods Destined for North Korea''.

PART 732—[AMENDED]

12. Section 732.1 is amended:

a. By revising the phrase ''Libya, and North Korea.'' in the next to last sentence of paragraph (d)(2) to read ''and Libya.''; and

b. By revising the phrase ''Libya, and North Korea'' in the last sentence of paragraph (d)(3) to read ''and Libya''.

§ 732.2 [Amended]

13. Section 732.2 is amended by revising the phrase ''North Korea, Libya,'' in paragraph (f)(1)(i) to read ''Libya,''.

§ 732.3 [Amended]

14. Section 732.3 is amended:

a. By revising the phrase ''Libya, and North Korea;'' in the first sentence of paragraph (d)(4) to read ''and Libya;'';

b. By revising the phrase ''Libya, North Korea,'' in the first sentence of paragraph (f)(1)(i) to read ''Libya,''; and

c. By revising the phrase ''Libya, North Korea,'' in the first sentence of the introductory text of paragraph (i) to read ''Libya,''.

PART 736—[AMENDED]

15. Section 736.2 is amended by revising the phrase ''Cuba, North Korea, Libya,'' in paragraph (b)(3)(i) to read ''Cuba, Libya,''.

PART 738—[AMENDED]

16. Section 738.3 is amended by revising the phrase *''ECCNs 0A988, 0A989, 0B986, 1C355, 1C995, 2A994, 2D994, and 2E994''* in paragraph (a)(2)(ii) to read *''ECCNs 0A988, 0A989, 0A999, 0B986, 0B999, 0D999, 1A999, 1B999, 1C355, 1C995, 1C998, 1C999, 1D999, 2A994, 2A999, 2B999, 2D994, 2E994, 3A999, and 6A999''.*

17. Supplement No. 1 to Part 738 is amended by revising the entry for ''Korea, North'' to read as follows:

Supplement No. 1 to Part 738—COMMERCE COUNTRY CHART

* * * * *

COMMERCE COUNTRY CHART

[Reason for control]

Countries	Chemical & biological weapons			Nuclear non-proliferation		National security		Missile tech	Regional stability		Firearms convention	Crime control			Anti-terrorism	
	CB 1	CB 2	CB 3	NP 1	NP 2	NS 1	NS 2	MT 1	RS 1	RS 2	FC 1	CC 1	CC 2	CC 3	AT 1	AT 2
Korea, North	X	X	X	X	X	X	X	X	X	X	.....	X	X	X	X	X

* * * * *

PART 740—[AMENDED]

§ 740.5 [Amended]

18. Section 740.5 is amended by revising the phrase ''Country Group D:1.'' to read ''Country Group D:1, except North Korea.''.

§ 740.9 [Amended]

19. Section 740.9 is amended:

a. By revising the phrase ''Cuba or North Korea'' in the second sentence of paragraph (b)(2)(i) to read ''Cuba'';

b. By revising the phrase ''Cuba, Libya, or North Korea.'' in the last sentence of paragraph (b)(3) to read ''Cuba or Libya.''; and

c. By revising the phrase ''Cuba, Libya, or North Korea;'' in paragraph (b)(4)(i) to read ''Cuba or Libya;''.

§ 740.10 [Amended]

20. Section 740.10 is amended:

a. By revising the phrase ''except the PRC'' in the heading of paragraph (b)(2)(iii) to read ''except the PRC and North Korea''; and

b. By revising the phrase ''(except the People's Republic of China (PRC))'' in paragraph (b)(2)(iii) to read ''(except the People's Republic of China (PRC) and North Korea)''

§ 740.15 [Amended]

21. Section 740.15 is amended:

a. By revising the phrase ''Cuba, or North Korea,'' in the first sentence of paragraph (b)(1) to read ''Cuba,'';

b. By revising the phrase ''Country Group D:1 or North Korea'' in the second sentence of paragraph (b)(1) to read ''Country Group D:1'';

c. By revising the phrase ''Cuba, Libya, or North Korea,'' in paragraph (b)(2) to read ''Cuba, or Libya,''; and

d. By revising the phrase ''Cuba, North Korea or'' in paragraphs (c)(1), (c)(2) introductory text and (c)(2)(ii) to read ''Cuba or''.

§ 740.16 [Amended]

22. Section 740.16 is amended by revising the phrase ''Cambodia or Laos'' in paragraph (a)(3)(ii) to read ''Cambodia, Laos, or North Korea''.

23. Supplement No. 1 to part 740 is amended:

a. By revising the entry for ''Korea, North'' in Country Group D; and

b. By revising Country Group E to read as follows:

Supplement No. 1 to Part 740

* * * * *

COUNTRY GROUP D

Country	[D:1] National security	[D:2] Nuclear	[D:3] Chemical & biological	[D:4] Missile technology
* * * *	*	*	*	*
Korea, North	X	X	X	X[1]

* * * * *

COUNTRY GROUP E

Country	[E:1] UN embargo	[E:2] Unilateral embargo
Angola	X	
Cuba		X
Iraq	X	
Libya	X	X
Rwanda	X	
Serbia and Montenegro	X	

PART 742—[AMENDED]

§ 742.1 [Amended]

24. Section 742.1 is amended:

a. By removing the third sentence of paragraph (a);

b. By removing the phrase ''North Korea,'' from the heading of paragraph (c) and the first sentence of paragraph (c);

c. By revising the phrase ''Iran, Syria'' in the first sentence of paragraph (d) to read ''Iran, North Korea, Syria''; and

d. By revising the phrase ''Iraq and North Korea,'' in the last sentence of paragraph (d) to read ''and Iraq,'.

§ 740.12 [Amended]

25. Section 742.12 is amended by revising the phrase ''for North Korea see § 746.5.'' in paragraph (b)(4)(ii) to read ''for North Korea see § 742.19(b).''.

26. Part 742 is revised by adding new § 742.19 to read as follows:

§ 742.19 Anti-terrorism: North Korea

(a) *License requirements.* (1) All items on the Commerce Control List (CCL) (i.e., with a designation other than EAR 99) require a license for export or reexport to North Korea, except ECCNs 0A988 and 0A989. This includes all items controlled for AT reasons, including any item on the CCL containing AT column 1 or AT column 2 in the Country Chart column of the License Requirements section of an ECCN; and ECCNS 0A986, 0A999, 0B986, 0B999, 0D999, 1A999, 1B999, 1C995, 1C999, 1D999, 2A994, 2B994, 2C994, 2A999, 2B999, 3A999, and 6A999.

(2) The Secretary of State has designated North Korea as a country whose Government has repeatedly provided support for acts of international terrorism.

(3) In support of U.S. foreign policy on terrorism-supporting countries, BXA maintains two types of anti-terrorism controls on the export and reexport of items described in Supplement 2 to part 742.

(i) Items described in paragraphs (c)(1) through (c)(5) of Supplement No. 2 to part 742 are controlled under section 6(j) of the Export Administration Act, as amended (EAA), if destined to military, police, intelligence or other sensitive end-users.

(ii) Items described in paragraphs (c)(1) through (c)(5) of Supplement No. 2 to part 742 destined to non-sensitive end-users, as well as items described in paragraph (c)(6) through (c)(44) to all end-users, are controlled to North Korea under section 6(a) of the EAA. (See Supplement No. 2 to part 742 for more information on items controlled under sections 6(a) and 6(j) of the EAA and § 750.6 of the EAR for procedures for processing license applications for items controlled under EAA section 6(j).)

(b) *Licensing policy.* (1) Applications for export and reexport to all end-users in North Korea of the following items will generally be denied:

(i) Items controlled for chemical and biological weapons proliferation reasons to any destination. These items contain CB Column 1, CB Column 2, or CB Column 3 in the Country Chart column of the ''License Requirements'' section of an ECCN on the CCL.

(ii) Items controlled for missile proliferation reasons to any destination. These items have an MT Column 1 in the Country Chart column of the ''License Requirements'' section of an ECCN on the CCL.

(iii) Items controlled for nuclear weapons proliferation reasons to any destination. These items contain NP Column 1 or NP Column 2 in the Country Chart column of the ''License Requirements'' section of an ECCN on the CCL.

(iv) Items controlled for national security reasons to any destination. These items contain NS Column 1 or NS Column 2 in the Country Chart column of the ''License Requirements'' section of an ECCN on the CCL.

(v) Military-related items controlled for national security reasons to any destination. These items contain NS Column 1 in the Country Chart column of the ''License Requirements'' section in an ECCN on the CCL *and* are controlled by equipment or material entries ending in the number ''18.''

(vi) All aircraft (powered and unpowered), helicopters, engines, and related spare parts and components. Such items contain an NS Column 1, NS Column 2, MT Column 1, or AT Column 1 in the Country Chart column of the ''License Requirements'' section of an ECCN on the CCL.

(vii) Cryptographic, cryptoanalytic, and crypto-logic items controlled any destination. These are items that contain an NS Column 1, NS Column 2, AT Column 1 or AT Column 2 in the Country Chart column of the ''License Requirements'' section of an ECCN on the CCL.

(viii) Submersible systems controlled under ECCN 8A992.

(ix) Scuba gear and related equipment controlled under ECCN 8A992.

(x) Pressurized aircraft breathing equipment controlled under ECCN 9A991.

(xi) Explosive device detectors controlled under ECCN 2A993.

(xii) Commercial charges and devices controlled under ECCN 1C992.

(xiii) Computer numerically controlled machine tools controlled under ECCN 2B991.

(xiv) Aircraft skin and spar milling machines controlled under ECCN 2B991.

(xv) Semiconductor manufacturing equipment controlled under ECCN 3B991.

(xvi) Digital computers with a CTP above 2000.

(xvii) Microprocessors with a CTP of 550 or above.

(2) Applications for export and reexport to North Korea of all other items described in paragraph (a) of this section, and not described by paragraph (b)(1) of this section, will generally be denied if the export or reexport is destined to a military end-user or for military end-use. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(3) Applications for export and reexport to North Korea of items described in paragraphs (c)(12), (c)(24), (c)(34), (c)(37), (c)(38), and (c)(44) of Supplement No. 2 to part 742 will generally be denied if the export or reexport is destined to nuclear end-

users or nuclear end-uses. Applications for non-nuclear end-users or for non-nuclear end-uses, excluding items described in (c)(24)(iv)(A) of Supplement No. 2 to part 742, will be considered on a case-by-case basis.

(4) License applications for items reviewed under section 6(a) controls will also be reviewed to determine the applicability of section 6(j) controls to the transaction. When it is determined that an export or reexport could make a significant contribution to the military potential of North Korea, including its military logistics capability, or could enhance North Korea's ability to support acts of international terrorism, the Secretaries of State and Commerce will notify the Congress 30 days prior to issuance of a license.

27. Supplement No. 2 to Part 742 is revised to read as follows:

Supplement No. 2 to Part 742—Anti-Terrorism Controls: Iran, North Korea, Syria and Sudan Contract Sanctity Dates and Related Policies

Note: Exports and reexports of items in performance of contracts entered into before the applicable contract sanctity date(s) will be eligible for review on a case-by-case basis or other applicable licensing policies that were in effect prior to the contract sanctity date. The contract sanctity dates set forth in this Supplement are for the guidance of exporters. Contract sanctity dates are established in the course of the imposition of foreign policy controls on specific items and are the relevant dates for the purpose of licensing determinations involving such items. If you believe that a specific contract sanctity date is applicable to your transaction, you should include all relevant information with your license application. BXA will determine any applicable contract sanctity date at the time an application with relevant supporting documents is submitted.

(a) *Terrorist-supporting countries.* The Secretary of State has designated Cuba, Iran, Iraq, Libya, North Korea, Sudan, and Syria as countries whose governments have repeatedly provided support for acts of international terrorism under section 6(j) of the Export Administration Act (EAA).

(b) *Items controlled under EAA sections 6(j) and 6(a).* Whenever the Secretary of State determines that an export or reexport to any of these countries could make a significant contribution to the military potential of such country, including its military logistics capability, or could enhance the ability of such country to support acts of international terrorism, the item is subject to mandatory control under EAA section 6(j) and the Secretaries of Commerce and State are required to notify appropriate Committees of the Congress 30 days before a license for such an item may be issued.

(1) On December 28, 1993, the Secretary of State determined that the export to Cuba, Libya, Iran, Iraq, North Korea, Sudan, or Syria of items described in paragraphs (c)(1) through (c)(5) of this Supplement, if destined to military, police, intelligence or other sensitive end-users, are controlled under EAA section 6(j). Therefore, the 30-day advance Congressional notification requirement applies to the export or reexport of these items to sensitive end-users in any of these countries.

(2) License applications for items controlled to designated terrorist-supporting countries under EAA section 6(a) will also be reviewed to determine whether the Congressional notification requirements of EAA section 6(j) apply.

(3) Items controlled for anti-terrorism reasons under section 6(a) to Iran, North Korea, Sudan, and Syria are:

(i) Items described in paragraphs (c)(1) through (c)(5) to non-sensitive end-users, and

(ii) The following items to all end-users: for Iran, items in paragraphs (c)(6) through (c)(42) of this Supplement; for North Korea, items in paragraph (c)(6) through (c)(44) of this Supplement; for Sudan, items in paragraphs (c)(6) through (c)(14), and (c)(16) through (c)(42) of this Supplement; and for Syria, items in paragraphs (c)(6) through (c)(8), (c)(10) through (c)(14), (c)(16) through (c)(19), and (c)(22) through (c)(42) of this Supplement.

(c) The license requirements and licensing policies for items controlled for anti-terrorism reasons to Iran, Syria, Sudan, and North Korea are generally described in §§ 742.8, 742.9, 742.10, and 742.19 of this part, respectively. This Supplement provides guidance on licensing policies for Iran, North Korea, Syria, and Sudan and related contract sanctity dates that may be available for transactions benefitting from pre-existing contracts involving Iran, Syria, and Sudan. Exporters are advised that the Treasury Department's Office of Foreign Assets Control administers a comprehensive trade and investment embargo against Iran (See Executive Orders 12957, 12959 and 13059 of March 15, 1995, May 6, 1995 and August 19, 1997, respectively.) Exporters are further advised that exports and reexports to Iran of items that are listed on the CCL as requiring a license for national security or foreign policy reasons are subject to a policy of denial under the Iran-Iraq Arms Non-Proliferation Act of October 23, 1992 (50 U.S.C. 1701 note (1994)). Transactions involving Iran and benefitting from a contract that pre-dates October 23, 1992 may be considered under the applicable licensing policy in effect prior to that date.

(1) *All items subject to national security controls.*

(i) *Iran.* Applications for all end-users in Iran will generally be denied.

(A) Contract sanctity date for military end-users or end-uses of items valued at $7 million or more: January 23, 1984.

(B) Contract sanctity date for military end-users or end-uses of all other national security controlled items: September 28, 1984.

(C) Contract sanctity date for non-military end-users or end-uses: August 28, 1991, *unless* otherwise specified in paragraphs (c)(2) through (c)(42) of this Supplement.

(ii) *Syria.* Applications for military end-users or military end-uses in Syria will generally be denied. Applications for non-military end-users or end-uses will be considered on a case-by-case basis, unless otherwise specified in paragraphs (c)(2) through (c)(42) of this Supplement. No contract sanctity date is available for items valued at $7 million or more to military end-users or end-uses. The contract sanctity date for all other items for all end-users: December 16, 1986.

(iii) *Sudan.* Applications for military end-users or military end-uses in Sudan will generally be denied. Applications for non-military end-users or end-uses will be considered on a case-by-case basis unless otherwise specified in paragraphs (c)(2) through (c)(42) of this Supplement. Contract sanctity date: January 19, 1996, unless a prior contract sanctity date applies (*e.g.,* items first controlled to Sudan for foreign policy reasons under EAA section 6(j) have a contract sanctity date of December 28, 1993).

(iv) *North Korea.* Applications for all end-users in North Korea of such equipment will generally be denied.

(2) *All items subject to chemical and biological weapons proliferation controls.* Applications for all end-users in Iran, North Korea, Syria, or Sudan of these items will generally be denied. See Supplement No. 1 to part 742 for contract sanctity dates for Iran and Syria. Contract sanctity date for Sudan: January 19, 1996, unless a prior contract sanctity date applies (*e.g.,* items first controlled to Sudan for foreign policy reasons under EAA section 6(j) have a contract sanctity date of December 28, 1993), or unless an earlier date for any item is listed in Supplement 1 to part 742.

(3) *All items subject to missile proliferation controls (MTCR).* Applications for all end-users in Iran,

North Korea, Syria, or Sudan will generally be denied. Contract sanctity provisions for Iran and Syria are not available. Contract sanctity date for Sudan: January 19, 1996, unless a prior contract sanctity date applies (*e.g.,* items first controlled to Sudan for foreign policy reasons under EAA section 6(j) have a contract sanctity date of December 28, 1993).

(4) *All items subject to nuclear weapons proliferation controls (NRL).*

(i) *Iran.* Applications for all end-users in Iran will generally be denied. No contract sanctity date is available.

(ii) *Syria.* Applications for military end-users or end-uses to Syria will generally be denied. Applications for non-military end-users or end-uses will be considered on a case-by-case basis unless otherwise specified in paragraphs (c)(2) through (c)(42) of this Supplement. No contract sanctity date is available.

(iii) *Sudan.* Applications for military end-users or end-uses in Sudan will generally be denied. Applications for export and reexport to non-military end-users or end-uses will be considered on a case-by-case basis unless otherwise specified in paragraphs (c)(2) through (c)(42) of this Supplement. No contract sanctity date is available.

(iv) *North Korea.* Applications for all end-users in North Korea will generally be denied.

(5) *All military-related items, i.e., applications for export and reexport of items controlled by CCL entries ending with the number ''18''.*

(i) *Iran.* Applications for all end-users in Iran will generally be denied. Contract sanctity date: see paragraph (c)(1)(i) of this Supplement.

(ii) *Syria.* Applications for all end-users in Syria will generally be denied. Contract sanctity date: see paragraph (c)(1)(ii) of this Supplement.

(iii) *Sudan.* Applications for all end-users in Sudan will generally be denied. Contract sanctity date for Sudan: January 19, 1996, unless a prior contract sanctity date applies (*e.g.,* items first controlled to Sudan for foreign policy reasons under EAA section 6(j) have a contract sanctity date of December 28, 1993).

(iv) *North Korea.* Applications for all end-users in North Korea will generally be denied.

(6) *All aircraft (powered and unpowered), helicopters, engines, and related spare parts and components.*

(i) *Iran.* Applications for all end-users in Iran will generally be denied.

(A) Contract sanctity date for helicopters exceeding 10,000 lbs. empty weight or fixed wing aircraft valued at $3 million or more: January 23, 1984.

(B) Contract sanctity date for other helicopters and aircraft and gas turbine engines therefor: September 28, 1984.

(C) Contract sanctity date for helicopter or aircraft parts and components controlled by 9A991.d: October 22, 1987.

(ii) *Syria.* Applications for all end-users in Syria will generally be denied.

(A) There is no contract sanctity for helicopters exceeding 10,000 lbs. empty weight or fixed wing aircraft valued at $3 million or more; except that passenger aircraft, regardless of value, have a contract sanctity date of December 16, 1986, if destined for a regularly scheduled airline with assurance against military use.

(B) Contract sanctity date for helicopters with 10,000 lbs. empty weight or less: April 28, 1986.

(C) Contract sanctity date for other aircraft and gas turbine engines therefor: December 16, 1986.

(D) Contract sanctity date for helicopter or aircraft parts and components controlled by ECCN 9A991.d: August 28, 1991.

(iii) *Sudan.* Applications for all end-users in Sudan will generally be denied. Contract sanctity date: January 19, 1996.

(iv) *North Korea.* Applications for all end-users in North Korea will generally be denied.

(7) *Heavy duty, on-highway tractors.*

(i) *Iran.* Applications for all end-users in Iran will generally be denied. Contract sanctity date: August 28, 1991.

(ii) *Syria.* Applications for military end-users or for military end-uses in Syria will generally be denied. Applications for non-military end-users or for non-military end-uses in Syria will be considered on a case-by-case basis. Contract sanctity date: August 28, 1991.

(iii) *Sudan.* Applications for military end-users or for military end-uses in Sudan will generally be denied. Applications for non-military end-users or for non-military end-uses in Sudan will be considered on a case-by-case basis. Contract sanctity date: January 19, 1996.

(iv) *North Korea.* Applications for military end-users or for military end-uses in North Korea will generally be denied. Applications for non-military end-users or for non-military end-uses in North Korea will be considered on a case-by-case basis.

(8) *Off-highway wheel tractors of carriage capacity 9t (10 tons) or more.*

(i) *Iran.* Applications for all end-users in Iran will generally be denied. Contract sanctity date: October 22, 1987.

(ii) *Syria.* Applications for military end-users or for military end-uses in Syria will generally be denied. Applications for non-military end-users or for non-military end-uses in Syria will be considered on a case-by-case basis. Contract sanctity date: August 28, 1991.

(iii) *Sudan.* Applications for military end-users or for military end-uses in Sudan will generally be denied. Applications for non-military end-users or for non-military end-uses in Sudan will be considered on a case-by-case basis. Contract sanctity date: January 19, 1996.

(iv) *North Korea.* Applications for military end-users or for military end-uses in North Korea will generally be denied. Applications for non-military end-users or for non-military end-uses in North Korea will be considered on a case-by-case basis.

(9) *Large diesel engines (greater than 400 horsepower) and parts to power tank transporters.*

(i) *Iran.* Applications for all end-users in Iran will generally be denied. Contract sanctity date: October 22, 1987.

(ii) *Sudan.* Applications for military end-users or for military end-uses in Sudan will generally be denied. Applications for non-military end-users or for non-military end-uses in Sudan will be considered on a case-by-case basis. Contract sanctity date: January 19, 1996.

(iii) *North Korea.* Applications for military end-users or for military end-uses in North Korea will generally be denied. Applications for non-military end-users or for non-military end-uses in North Korea will be considered on a case-by-case basis.

(10) *Cryptographic, cryptoanalytic, and cryptologic equipment.*

(i) *Iran.* Applications for all end-users in Iran will generally be denied.

(A) Contract sanctity date for military end-users or end-uses of cryptographic, cryptoanalytic, and cryptologic equipment that was subject to national security controls on October 22, 1987: see paragraph (c)(1)(i) of this Supplement.

(B) Contract sanctity date for all other cryptographic, cryptoanalytic, and cryptologic equipment for all end-users: October 22, 1987.

(ii) *Syria.* A license is required for all national security-controlled cryptographic, cryptoanalytic, and cryptologic equipment to all end-users. Applications for all end-users in Syria will generally be denied. Contract sanctity date for cryptographic, cryptoanalytic, and cryptologic equipment that was subject to national security controls on August 28, 1991: see paragraph (c)(1)(ii) of this Supplement.

(iii) *Sudan.* Applications for all end-users in Sudan of any such equipment will generally be denied. Contract sanctity date for Sudan: January 19, 1996, unless a prior contract sanctity date applies (*e.g.,* items first controlled to Sudan for foreign policy reasons under EAA section 6(j) have a contract sanctity date of December 28, 1993).

(iv) *North Korea.* Applications for all end-users in North Korea of any such equipment will generally be denied.

(11) *Navigation, direction finding, and radar equipment.*

(i) *Iran.* Applications for all end-users in Iran will generally be denied.

(A) Contract sanctity date for military end-users or end-uses of navigation, direction finding, and radar equipment that was subject to national security controls on August 28, 1991: see paragraph (c)(1)(i) of this Supplement.

(B) Contract sanctity date for all other navigation, direction finding, and radar equipment for all end-users: October 22, 1987.

(ii) *Syria.* Applications for military end-users or for military end-uses in Syria of such equipment will generally be denied. Applications for non-military end-users or for non-military end-uses in Syria will be considered on a case-by-case basis.

(A) Contract sanctity date for exports of navigation, direction finding, and radar equipment that was subject to national security controls on August 28, 1991: see paragraph (c)(1)(ii) of this Supplement.

(B) Contract sanctity date for all other navigation, direction finding, and radar equipment: August 28, 1991.

(iii) *Sudan.* Applications for military end-users or for military end-uses in Sudan of such equipment will generally be denied. Applications for non-military end-users or for non-military end-uses in Sudan of such equipment will be considered on a case-by-case basis. Contract sanctity date for Sudan: January 19, 1996, unless a prior contract sanctity date applies (*e.g.,* items first controlled to Sudan for foreign policy reasons under EAA section 6(j) have a contract sanctity date of December 28, 1993).

(iv) *North Korea.* Applications for military end-users or for military end-uses in North Korea of such equipment will generally be denied. Applications for non-military end-users or for non-military end-uses in North Korea will be considered on a case-by-case basis.

(12) *Electronic test equipment.*

(i) *Iran.* Applications for all end-users in Iran will generally be denied.

(A) Contract sanctity date for military end-users or end-uses of electronic test equipment that was subject to national security controls on October 22, 1987: see paragraph (c)(1)(i) of this Supplement.

(B) Contract sanctity date for all other electronic test equipment for all end-users: October 22, 1987.

(ii) *Syria.* Applications for military end-users or for military end-uses in Syria of such equipment will generally be denied. Applications for non-military end-users or for non-military end-uses in Syria will be considered on a case-by-case basis.

(A) Contract sanctity date for electronic test equipment that was subject to national security controls on August 28, 1991: see paragraph (c)(1)(ii) of this Supplement.

(B) Contract sanctity date for all other electronic test equipment: August 28, 1991.

(iii) *Sudan.* Applications for military end-users or for military end-uses in Sudan of such equipment will generally be denied. Applications for non-military end-users or for non-military end-uses in Sudan will be considered on a case-by-case basis. Contract sanctity date for Sudan: January 19, 1996, unless a prior contract sanctity date applies (*e.g.,* items first controlled to Sudan for foreign policy reasons under EAA section 6(j) have a contract sanctity date of December 28, 1993).

(iv) *North Korea.* Applications for military end-users or for military end-uses, or for nuclear end-users or nuclear end-uses, in North Korea of such equipment will generally be denied. Applications for non-military end-users or for non-military end-uses, or for non-nuclear end-users or non-nuclear end-uses, in North Korea will be considered on a case-by-case basis.

(13) *Mobile communications equipment.*

(i) *Iran.* Applications for all end-users in Iran of such equipment will generally be denied.

(A) Contract sanctity date for military end-users or end-uses of mobile communications equipment that was subject to national security controls on October 22, 1987: see paragraph (c)(1)(i) of this Supplement.

(B) Contract sanctity date for all end-users of all other mobile communications equipment: October 22, 1987.

(ii) *Syria.* Applications for military end-users or for military end-uses in Syria of such equipment will generally be denied. Applications for non-military end-users or for non-military end-uses in Syria will be considered on a case-by-case basis.

(A) Contract sanctity date for mobile communications equipment that was subject to national security controls on August 28, 1991: see paragraph (c)(1)(ii) of this Supplement.

(B) Contract sanctity date for exports of all other mobile communications equipment: August 28, 1991.

(iii) *Sudan.* Applications for military end-users or for military end-uses in Sudan of such equipment will generally be denied. Applications for non-military end-users or for non-military end-uses in Sudan of such equipment will be considered on a case-by-case basis. Contract sanctity date for Sudan: January 19, 1996, unless a prior contract sanctity date applies (*e.g.,* items first controlled to Sudan for foreign policy reasons under EAA section 6(j) have a contract sanctity date of December 28, 1993).

(iv) *North Korea.* Applications for military end-users or for military end-uses in North Korea of such equipment will generally be denied. Applications for non-military end-users or for non-military end-uses in North Korea will be considered on a case-by-case basis.

(14) *Acoustic underwater detection equipment.*

(i) *Iran.* Applications for all end-users in Iran of such equipment will generally be denied.

(A) Contract sanctity date for military end-users or end-uses of acoustic underwater detection equipment that was subject to national security controls on October 22, 1987: see paragraph (c)(1)(i) of this Supplement.

(B) Contract sanctity date for all other acoustic underwater detection equipment for all end-users: October 22, 1987.

(ii) *Syria.* A license is required for acoustic underwater detection equipment that was subject to national security controls on August 28, 1991, to all end-users. Applications for military end-users or for military end-uses in Syria will generally be denied. Applications for non-military end-users or for non-military end-uses in Syria will be considered on a case-by-case basis. Contract sanctity date for acoustic underwater detection equipment that was subject to national security controls on August 28, 1991: see paragraph (c)(1)(ii) of this Supplement.

(iii) *Sudan.* Applications for military end-users or for military end-uses to Sudan of such equipment will generally be denied. Applications for non-military end-users or for non-military end-uses in Sudan will be considered on a case-by-case basis. Contract sanctity date for Sudan: January 19, 1996, unless a prior contract sanctity date applies (*e.g.*, items first controlled to Sudan for foreign policy reasons under EAA section 6(j) have a contract sanctity date of December 28, 1993).

(iv) *North Korea.* Applications for military end-users or for military end-uses in North Korea of such equipment of these items will generally be denied. Applications for non-military end-users or for non-military end-uses in North Korea of such equipment will be considered on a case-by-case basis.

(15) *Portable electric power generators.*

(i) *Iran.* Applications for all end-users in Iran of such equipment will generally be denied. Contract sanctity date: October 22, 1987.

(ii) *North Korea.* Applications for military end-users or for military end-uses in North Korea of such equipment will generally be denied. Applications for non-military end-users or for non-military end-uses in North Korea of such equipment will be considered on a case-by-case basis.

(16) *Vessels and boats, including inflatable boats.*

(i) *Iran.* Applications for all end-users in Iran of these items will generally be denied.

(A) Contract sanctity date for military end-users or end-uses of vessels and boats that were subject to national security controls on October 22, 1987: see paragraph (c)(1)(i) of this Supplement.

(B) Contract sanctity date for all other vessels and boats for all end-users: October 22, 1987.

(ii) *Syria.* A license is required for national security-controlled vessels and boats. Applications for military end-users or for military end-uses in Syria of these items will generally be denied. Applications for non-military end-users or for non-military end-uses in Syria will be considered on a case-by-case basis. Contract sanctity date for vessels and boats that were subject to national security controls on August 28, 1991: see paragraph (c)(1)(ii) of this Supplement.

(iii) *Sudan.* Applications for military end-users or for military end-uses in Sudan of these items will generally be denied. Applications for non-military end-users or for non-military end-uses in Sudan will be considered on a case-by-case basis. Contract sanctity date for Sudan: January 19, 1996, unless a prior contract sanctity date applies (e.g., items first controlled to Sudan for foreign policy reasons under EAA section 6(j) have a contract sanctity date of December 28, 1993).

(iv) *North Korea.* Applications for military end-users or for military end-uses in North Korea of these items will generally be denied. Applications for non-military end-users or for non-military end-uses in North Korea of these items will be considered on a case-by-case basis.

(17) *Marine and submarine engines (outboard/inboard, regardless of horsepower).*

(i) *Iran.* Applications for all end-users in Iran of these items will generally be denied.

(A) Contract sanctity date for military end-users or end-uses of marine and submarine engines that were subject to national security controls on October 22, 1987: see paragraph (c)(1)(i) of this Supplement.

(B) Contract sanctity date for outboard engines of 45 HP or more for all end-users: September 28, 1984.

(C) Contract sanctity date for all other marine and submarine engines for all end-users: October 22, 1987.

(ii) *Syria.* A license is required for all marine and submarine engines subject to national security controls to all end-users. Applications for military end-users or for military end-uses in Syria of these items will generally be denied. Applications for non-military end-users or for non-military end-uses in Syria will be considered on a case-by-case basis. Contract sanctity date for marine and submarine engines that were subject to national security controls on August 28, 1991: see paragraph (c)(1)(ii) of this Supplement.

(iii) *Sudan.* Applications for military end-users or for military end-uses in Sudan of these items will generally be denied. Applications for non-military end-users or for non-military end-uses in Sudan will be considered on a case-by-case basis. Contract sanctity date for Sudan: January 19, 1996, unless a prior contract sanctity date applies (e.g., items first controlled to Sudan for foreign policy reasons under EAA section 6(j) have a contract sanctity date of December 28, 1993).

(iv) *North Korea.* Applications for military end-users or for military end-uses in North Korea of these items will generally be denied. Applications for non-military end-users or for non-military end-uses in North Korea of these items will be considered on a case-by-case basis.

(18) *Underwater photographic equipment.*

(i) *Iran.* Applications for all end-users in Iran of such equipment will generally be denied.

(A) Contract sanctity date for military end-users or end-uses of underwater photographic equipment that was subject to national security controls on October 22, 1987: see paragraph (c)(1)(i) of this Supplement.

(B) Contract sanctity date for all other underwater photographic equipment for all end-users: October 22, 1987.

(ii) *Syria.* Applications for military end-users or for military end-uses in Syria of such equipment will generally be denied. Applications for non-military end-users or for non-military end-uses in Syria will be considered on a case-by-case basis.

(A) Contract sanctity date for underwater photographic equipment that was subject to national security controls on August 28, 1991: see paragraph (c)(1)(ii) of this Supplement.

(B) Contract sanctity date for all other underwater photographic equipment: August 28, 1991.

(iii) *Sudan.* Applications for military end-users or for military end-uses in Sudan of such equipment will generally be denied. Applications for non-military end-users or for non-military end-uses in Sudan will be considered on a case-by-case basis. Contract sanctity date for Sudan: January 19, 1996, unless a prior contract sanctity date applies (*e.g.,* items first controlled to Sudan for foreign policy reasons under EAA section 6(j) have a contract sanctity date of December 28, 1993).

(iv) *North Korea.* Applications for all end-users in North Korea of such equipment will generally be denied.

(19) *Submersible systems.*

(i) *Iran.* Applications for all end-users in Iran of such systems will generally be denied.

(A) Contract sanctity date for military end-users or end-uses of submersible systems that were subject to national security controls on October 22, 1987: see paragraph (c)(1)(i) of this Supplement.

(B) Contract sanctity date for all other submersible systems for all end-users: October 22, 1987.

(ii) *Syria.* Applications for military end-users or for military end-uses in Syria of such systems will generally be denied. Applications for non-military end-users or for non-military end-uses in Syria will be considered on a case-by-case basis.

(A) Contract sanctity date for submersible systems that were subject to national security controls on August 28, 1991: see paragraph (c)(1)(ii) of this Supplement.

(B) Contract sanctity date for all other submersible systems: August 28, 1991.

(iii) *Sudan.* Applications for military end-users or for military end-uses in Sudan of such systems will generally be denied. Applications for non-military end-users or for non-military end-uses in Sudan will be considered on a case-by-case basis. Contract sanctity date for Sudan: January 19, 1996, unless a prior contract sanctity date applies(e.g., items first controlled to Sudan for foreign policy reasons under EAA section 6(j)

have a contract sanctity date of December 28, 1993).

(iv) *North Korea.* Applications for all end-users in North Korea of such equipment will generally be denied.

(20) *Scuba gear and related equipment.*

(i) *Iran.* Applications for all end-users in Iran of such equipment will generally be denied. No contract sanctity is available for such items to Iran.

(ii) *Sudan.* Applications for military end-users and end-uses in Sudan of these items will generally be denied. Applications for non-military end-users or for non-military end-uses in Sudan will be considered on a case-by-case basis. Contract sanctity date: January 19, 1996.

(iii) *North Korea.* Applications for all end-users in North Korea of such equipment will generally be denied.

(21) *Pressurized aircraft breathing equipment.*

(i) *Iran.* Applications for all end-users in Iran of such equipment will generally be denied. Contract sanctity date: October 22, 1987.

(ii) *Sudan.* Applications for military end-users or for military end-uses in Sudan of these items will generally be denied. Applications for non-military end-users or for non-military end-uses in Sudan will be considered on a case-by-case basis. Contract sanctity date: January 19, 1996.

(iii) *North Korea.* Applications for all end-users in North Korea of such equipment will generally be denied.

(22) *Computer numerically controlled machine tools.*

(i) *Iran.* Applications for all end-users in Iran of these items will generally be denied.

(A) Contract sanctity date for military end-users and end-uses of computer numerically controlled machine tools that were subject to national security controls on August 28, 1991: see paragraph (c)(1)(i) of this Supplement.

(B) Contract sanctity dates for all other computer numerically controlled machine tools for all end-users: August 28, 1991.

(ii) *Syria.* Applications for military end-users or for military end-uses in Syria of these items will generally be denied. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(A) Contract sanctity date for computer numerically controlled machine tools that were subject to national security controls on August 28, 1991: see paragraph (c)(1)(ii) of this Supplement.

(B) Contract sanctity date for exports of all other computer numerically controlled machine tools: August 28, 1991.

(iii) *Sudan.* Applications for military end-users or for military end-uses in Sudan of these items will generally be denied. Applications for non-military end-users or for non-military end-uses in Sudan will be considered on a case-by-case basis. Contract sanctity date for Sudan: January 19, 1996, unless a prior contract sanctity date applies (*e.g.*, items first controlled to Sudan for foreign policy reasons under EAA section 6(j) have a contract sanctity date of December 28, 1993).

(iv) *North Korea.* Applications for all end-users in North Korea of such equipment will generally be denied.

(23) *Vibration test equipment.*

(i) *Iran.* Applications for all end-users in Iran of such equipment will generally be denied.

(A) Contract sanctity date for military end-users and end-uses of vibration test equipment that was subject to national security controls on August 28, 1991: see paragraph (c)(1)(i) of this Supplement.

(B) Contract sanctity dates for all other vibration test equipment for all end-users: August 28, 1991.

(ii) *Syria.* Applications for military end-users or for military end-uses in Syria of such equipment will generally be denied. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(A) Contract sanctity date for vibration test equipment that was subject to national security controls on August 28, 1991: see paragraph (c)(1)(ii) of this Supplement.

(B) Contract sanctity date for exports of all other vibration test equipment: August 28, 1991.

(iii) *Sudan.* Applications for military end-users or for military end-uses in Sudan of such equipment will generally be denied. Applications for non-military end-users or for non-military end-uses in Sudan will be considered on a case-by-case basis. Contract sanctity date for Sudan: January 19, 1996, unless a prior contract sanctity date applies (*e.g.*, items first controlled to Sudan for foreign policy reasons under EAA section 6(j) have a contract sanctity date of December 28, 1993).

(iv) *North Korea.* Applications for military end-users or for military end-uses in North Korea of these items will generally be denied. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(24) *Digital computers with a CTP of 6 or above, assemblies, related equipment, equipment for development or production of magnetic and optical storage equipment, and materials for fabrication of head/disk assemblies.*

(i) *Iran.* Applications for all end-users in Iran of these items will generally be denied.

(A) Contract sanctity dates for military end-users and end-uses of items that were subject to national security controls on August 28, 1991: see paragraph (c)(1)(i) of this Supplement.

(B) Contract sanctity date for all other items for all end-users: August 28, 1991.

(ii) *Syria.* Applications for military end-users or for military end-uses in Syria of these items will generally be denied. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(A) Contract sanctity dates for items that were subject to national security controls on August 28, 1991: see paragraph (c)(1)(ii) of this Supplement.

(B) Contract sanctity date for all other items: August 28, 1991.

(iii) *Sudan.* Applications for military end-users or for military end-uses in Sudan of these items will generally be denied. Applications for non-military end-users or for non-military end-uses in Sudan will be considered on a case-by-case basis. Contract sanctity date for Sudan: January 19, 1996, unless a prior contract sanctity date applies (*e.g.*, items first controlled to Sudan for foreign policy reasons under EAA section 6(j) have a contract sanctity date of December 28, 1993).

(iv) *North Korea.*

(A) Computers with a CTP above 2000 MTOPS: Applications for all end-users will generally be denied.

(B) Computers with a CTP at or below 2000 MTOPS: Applications for military end-users or for military end-uses, or for nuclear end-users or nuclear end-uses, will generally be denied. Applications for non-military end-users or for non-military end-uses, or for non-nuclear end-users or non-nuclear end-uses, will be considered on a case-by-case basis.

(25) *Telecommunications equipment.*

(i) A license is required for the following telecommunications equipment:

(A) Radio relay systems or equipment operating at a frequency equal to or greater than 19.7 GHz or ''spectral efficiency'' greater than 3 bit/s/Hz;

(B) Fiber optic systems or equipment operating at a wavelength greater than 1000 nm;

(C) ''Telecommunications transmission systems'' or equipment with a ''digital transfer rate'' at the highest multiplex level exceeding 45 Mb/s.

(ii) *Iran.* Applications for all end-users in Iran of such equipment will generally be denied.

(A) Contract sanctity date for military end-users and end-uses of telecommunications equipment that was subject to national security controls on August 28, 1991: see paragraph (c)(1)(i) of this Supplement.

(B) Contract sanctity dates for all other vibration test equipment for all end-users: August 28, 1991.

(iii) *Syria.* Applications for military end-users or for military end-uses in Syria of such equipment will generally be denied. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(A) Contract sanctity date for exports of telecommunications equipment that was subject to national security controls on August 28, 1991: see paragraph (c)(1)(ii) of this Supplement.

(B) Contract sanctity date for exports of all other telecommunications equipment: August 28, 1991.

(iv) *Sudan.* Applications for military end-users or for military end-uses in Sudan of such equipment will generally be denied. Applications for non-military end-users or for non-military end-uses in Sudan will be considered on a case-by-case basis. Contract sanctity date for Sudan: January 19, 1996, unless a prior contract sanctity date applies (*e.g.,* items first controlled to Sudan for foreign policy reasons under EAA section 6(j) have a contract sanctity date of December 28, 1993).

(v) *North Korea.* Applications for military end-users or for military end-uses in North Korea of such equipment will generally be denied. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(26) *Microprocessors.*

(i) Operating at a clock speed over 25 MHz.

(A) *Iran.* Applications for all end-users in Iran of these items will generally be denied.

(*1*) Contract sanctity date for military end-users and end-uses of microprocessors that were subject to national security controls on August 28, 1991: see paragraph (c)(1)(i) of this Supplement.

(*2*) Contract sanctity dates for all other microprocessors for all end-users: August 28, 1991.

(B) *Syria.* Applications for military end-users or for military end-uses in Syria of these items will generally be denied. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(*1*) Contract sanctity date for microprocessors that were subject to national security controls on August 28, 1991: see paragraph (c)(1)(ii) of this Supplement.

(*2*) Contract sanctity date for all other microprocessors: August 28, 1991.

(C) *Sudan.* Applications for military end-users or for military end-uses in Sudan of these items will generally be denied. Applications for non-military end-users or for non-military end-uses in Sudan will be considered on a case-by-case basis. Contract sanctity date for Sudan: January 19, 1996, unless a prior contract sanctity date applies (*e.g.*, items first controlled to Sudan for foreign policy reasons under EAA section 6(j) have a contract sanctity date of December 28, 1993).

(ii) With a CTP of 550 MTOPS or above.

(A) *North Korea.* Applications for all end-users in North Korea of these items will generally be denied.

(B) [Reserved]

(27) *Semiconductor manufacturing equipment.* For Iran, Syria, Sudan, or North Korea a license is required for all such equipment described in ECCNs 3B001 and 3B991.

(i) *Iran.* Applications for all end-users in Iran of such equipment will generally be denied.

(A) Contract sanctity date for military end-users and end-uses of semiconductor manufacturing equipment that was subject to national security controls on August 28, 1991: see paragraph (c)(1)(i) of this Supplement.

(B) Contract sanctity dates for all other microprocessors for all end-users: August 28, 1991.

(ii) *Syria.* Applications for military end-users or for military end-uses in Syria of such equipment will generally be denied. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(A) Contract sanctity date for semiconductor manufacturing equipment that was subject to national security controls on August 28, 1991: see paragraph (c)(1)(ii) of this Supplement.

(B) Contract sanctity date for all other semiconductor manufacturing equipment: August 28, 1991.

(iii) *Sudan.* Applications for military end-users or for military end-uses in Sudan of such equipment will generally be denied. Applications for non-military end-users or for non-military end-uses in Sudan will be considered on a case-by-case basis. Contract sanctity date for Sudan: January 19, 1996, unless a prior contract sanctity date applies (*e.g.*, items first controlled to Sudan for foreign policy reasons under EAA section 6(j) have a contract sanctity date of December 28, 1993).

(iv) *North Korea.* Applications for all end-users in North Korea of such equipment will generally be denied.

(28) *Software specially designed for the computer-aided design and manufacture of integrated circuits.*

(i) *Iran.* Applications for all end-users in Iran of such software will generally be denied.

(A) Contract sanctity date for military end-users and end-uses of such software that was subject to national security controls on August 28, 1991: see paragraph (c)(1)(i) of this Supplement.

(B) Contract sanctity dates for all other such software for all end-users: August 28, 1991.

(ii) *Syria.* Applications for military end-users or for military end-uses in Syria of such software will generally be denied. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(A) Contract sanctity date for such software that was subject to national security controls on August 28, 1991: see paragraph (c)(1)(ii) of this Supplement.

(B) Contract sanctity date for all other such software: August 28, 1991.

(iii) *Sudan.* Applications for military end-users or for military end-uses in Sudan of such software will generally be denied. Applications for non-military end-users or for non-military end-uses in Sudan will be considered on a case-by-case basis. Contract sanctity date for Sudan: January 19, 1996, unless a prior contract sanctity date applies (*e.g.,* items first controlled to Sudan for foreign policy reasons under EAA section 6(j) have a contract sanctity date of December 28, 1993).

(iv) *North Korea.* Applications for military end-users or for military end-uses in North Korea of such software will generally be denied. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(29) *Packet switches. Equipment described in ECCN 5A991.c.*

(i) *Iran.* Applications for all end-users in Iran of such equipment will generally be denied.

(A) Contract sanctity date for military end-users and end-uses in Iran of packet switches that were subject to national security controls on August 28, 1991: see paragraph (c)(1)(i) of this Supplement.

(B) Contract sanctity dates for all other packet switches for all end-users: August 28, 1991.

(ii) *Syria.* Applications for military end-users or for military end-uses in Syria of such equipment will generally be denied. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(A) Contract sanctity date for packet switches that were subject to national security controls on August 28, 1991: see paragraph (c)(1)(ii) of this Supplement.

(B) Contract sanctity date for all other packet switches: August 28, 1991.

(iii) *Sudan.* Applications for military end-users or for military end-uses in Sudan of such equipment will generally be denied. Applications for non-military end-users or for non-military end-uses in Sudan will be considered on a case-by-case basis. Contract sanctity date for Sudan: January 19, 1996, unless a prior contract sanctity date applies (e.g., items first controlled to Sudan for foreign policy reasons under EAA section 6(j) have a contract sanctity date of December 28, 1993).

(iv) *North Korea.* Applications for military end-users or for military end-uses in North Korea of these items will generally be denied. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(30) *Specially designed software for air traffic control applications that uses any digital signal processing techniques for automatic target tracking or that has a facility for electronic tracking.*

(i) *Iran.* Applications for all end-users in Iran of such software will generally be denied.

(A) Contract sanctity date for military end-users and end-uses of such software that was subject to national security controls on August 28, 1991: see paragraph (c)(1)(i) of this Supplement.

(B) Contract sanctity dates for all other such software for all end-users: August 28, 1991.

(ii) *Syria.* Applications for military end-users or for military end-uses in Syria of such software will generally be denied. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(A) Contract sanctity date for such software that was subject to national security controls on August 28, 1991: see paragraph (c)(1)(ii) of this Supplement.

(B) Contract sanctity date for exports of all other such software: August 28, 1991.

(iii) *Sudan.* Applications for military end-users or for military end-uses in Sudan of such software will generally be denied. Applications for non-military end-users or for non-military end-uses in Sudan will be considered on a case-by-case basis. Contract sanctity date for Sudan: January 19, 1996, unless a prior contract sanctity date applies (*e.g.,* items first controlled to Sudan for foreign policy reasons under EAA section 6(j) have a contract sanctity date of December 28, 1993).

(iv) *North Korea.* Applications for military end-users or for military end-uses in North Korea of such software will generally be denied. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(31) *Gravity meters having static accuracy of less (better) than 100 microgal, or gravity meters of the quartz element (worden) type.*

(i) *Iran.* Applications for all end-users in Iran of these items will generally be denied.

(A) Contract sanctity date for military end-users and end-uses of gravity meters that were subject to national security controls on August 28, 1991: see paragraph (c)(1)(i) of this Supplement.

(B) Contract sanctity dates for all other such gravity meters for all end-users: August 28, 1991.

(ii) *Syria.* Applications for military end-users or for military end-uses in Syria of these items will generally be denied. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(A) Contract sanctity date for gravity meters that were subject to national security controls on August 28, 1991: see paragraph (c)(1)(ii) of this Supplement.

(B) Contract sanctity date for exports of all other such gravity meters: August 28, 1991.

(iii) *Sudan.* Applications for military end-users or for military end-uses in Sudan of these items will generally be denied. Applications for non-military end-users or for non-military end-uses in Sudan will be considered on a case-by-case basis. Contract sanctity date for Sudan: January 19, 1996, unless a prior contract sanctity date applies (*e.g.,* items first controlled to Sudan for foreign policy reasons under EAA section 6(j) have a contract sanctity date of December 28, 1993).

(iv) *North Korea.* Applications for military end-users or for military end-uses in North Korea of these items will generally be denied. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(32) *Magnetometers with a sensitivity lower (better) than 1.0 nt rms per square root* Hertz.

(i) *Iran.* Applications for all end-users in Iran of these items will generally be denied.

(A) Contract sanctity date for military end-users and end-uses of such magnetometers that were subject to national security controls on August 28, 1991: see paragraph (c)(1)(i) of this Supplement.

(B) Contract sanctity dates for all other such magnetometers for all end-users: August 28, 1991.

(ii) *Syria.* Applications for military end-users or for military end-uses in Syria of these items will generally be denied. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(A) Contract sanctity date for such magnetometers that were subject to national security controls on August 28, 1991: see paragraph (c)(1)(ii) of this Supplement.

(B) Contract sanctity date for all other such magnetometers: August 28, 1991.

(iii) *Sudan.* Applications for military end-users or for military end-uses in Sudan of these items will generally be denied. Applications for non-military end-users or for non-military end-uses in Sudan will be considered on a case-by-case basis. Contract sanctity date for Sudan: January 19, 1996, unless a prior contract sanctity date applies (*e.g.,* items first controlled to Sudan for foreign policy reasons under EAA section 6(j) have a contract sanctity date of December 28, 1993).

(iv) *North Korea.* Applications for military end-users or for military end-uses in North Korea of these items will generally be denied. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(33) *Fluorocarbon compounds described in ECCN 1C006.d for cooling fluids for radar.*

(i) *Iran.* Applications for all end-users in Iran of such compounds will generally be denied.

(A) Contract sanctity date for military end-users and end-uses of such fluorocarbon compounds that were subject to national security controls on August 28, 1991: see paragraph (c)(1)(i) of this Supplement.

(B) Contract sanctity dates for all other such fluorocarbon compounds for all end-users: August 28, 1991.

(ii) *Syria.* Applications for military end-users or for military end-uses in Syria of such compounds will generally be denied. Applications for non-military end-users or for non-military end-uses

will be considered on a case-by-case basis.

(A) Contract sanctity date for such fluorocarbon compounds that were subject to national security controls on August 28, 1991: see paragraph (c)(1)(ii) of this Supplement.

(B) Contract sanctity date for all other such fluorocarbon compounds: August 28, 1991.

(iii) *Sudan.* Applications for military end-users or for military end-uses in Sudan of such compounds will generally be denied. Applications for non-military end-users or for non-military end-uses in Sudan will be considered on a case-by-case basis. Contract sanctity date for Sudan: January 19, 1996, unless a prior contract sanctity date applies (*e.g.,* items first controlled to Sudan for foreign policy reasons under EAA section 6(j) have a contract sanctity date of December 28, 1993).

(iv) *North Korea.* Applications for military end-users or for military end-uses in North Korea of these items will generally be denied. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(34) *High strength organic and inorganic fibers (kevlar) described in ECCN 1C210.*

(i) *Iran.* Applications for all end-users in Iran of such fibers will generally be denied.

(A) Contract sanctity date for military end-users and end-uses of high strength organic and inorganic fibers (kevlar) described in ECCN 1C210 that were subject to national security controls on August 28, 1991: see paragraph (c)(1)(i) of this Supplement.

(B) Contract sanctity dates for all other high strength organic and inorganic fibers (kevlar) described in ECCN 1C210 for all end-users: August 28, 1991.

(ii) *Syria.* Applications for military end-users or for military end-uses in Syria of such fibers will generally be denied. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(A) Contract sanctity date for high strength organic and inorganic fibers (kevlar) described in ECCN 1C210 that were subject to national security controls on August 28, 1991: see paragraph (c)(1)(ii) of this Supplement.

(B) Contract sanctity date for all other high strength organic and inorganic fibers (kevlar) described in ECCN 1C210: August 28, 1991.

(iii) *Sudan.* Applications for military end-users or for military end-uses in Sudan of such fibers will generally be denied. Applications for non-military end-users or for non-military end-uses in Sudan will be considered on a case-by-case basis. Contract sanctity date for Sudan: January 19, 1996, unless a prior contract sanctity date applies (*e.g.,* items first controlled to Sudan for foreign policy reasons under EAA section 6(j) have a contract sanctity date of December 28, 1993).

(iv) *North Korea.* Applications for military end-users or for military end-uses, or for nuclear end-users or nuclear end-uses, in North Korea of such equipment will generally be denied. Applications for non-military end-users or for non-military end-uses, or for non-nuclear end-users or non-nuclear end-uses, in North Korea will be considered on a case-by-case basis.

(35) *Machines described in ECCNs 2B003 and 2B993 for cutting gears up to 1.25 meters in diameter.*

(i) *Iran.* Applications for all end-users in Iran of these items will generally be denied.

(A) Contract sanctity date for military end-users and end-uses of such machines that were subject to national security controls on August 28, 1991: see paragraph (c)(1)(i) of this Supplement.

(B) Contract sanctity dates for all other such machines for all end-users: August 28, 1991.

(ii) *Syria.* Applications for military end-users or for military end-uses in Syria of these items will generally be denied. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(A) Contract sanctity date for machines that were subject to national security controls on August 28, 1991: see paragraph (c)(1)(ii) of this Supplement.

(B) Contract sanctity date for all other machines: August 28, 1991.

(iii) *Sudan.* Applications for military end-users or for military end-uses in Sudan of these items will generally be denied. Applications for non-military end-users or for non-military end-uses in Sudan will be considered on a case-by-case basis. Contract sanctity date for Sudan: January 19, 1996, unless a prior contract sanctity date applies (*e.g.,* items first controlled to Sudan for foreign policy reasons under EAA section 6(j) have a contract sanctity date of December 28, 1993).

(iv) *North Korea.* Applications for military end-users or for military end-uses in North Korea of these items will generally be denied. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(36) *Aircraft skin and spar milling machines.*

(i) *Iran.* Applications for all end-users in Iran of these items will generally be denied.

(A) Contract sanctity date for military end-users and end-uses of aircraft skin and spar milling machines that were subject to national security controls on August 28, 1991: see paragraph (c)(1)(i) of this Supplement.

(B) Contract sanctity dates for all other aircraft skin and spar milling machines to all end-users: August 28, 1991.

(ii) *Syria.* Applications for military end-users or for military end-uses in Syria of these items will generally be denied. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(A) Contract sanctity date for aircraft skin and spar milling machines that were subject to national security controls on August 28, 1991: see paragraph (c)(1)(ii) of this Supplement.

(B) Contract sanctity date for all other aircraft skin and spar milling machines: August 28, 1991.

(iii) *Sudan.* Applications for military end-users or for military end-uses in Sudan of these items will generally be denied. Applications for non-military end-users or for non-military end-uses in Sudan will be considered on a case-by-case basis. Contract sanctity date for Sudan: January 19, 1996, unless a prior contract sanctity date applies (*e.g.,* items first controlled to Sudan for foreign policy reasons under EAA section 6(j) have a contract sanctity date of December 28, 1993).

(iv) *North Korea.* Applications for all end-users in North Korea of such equipment will generally be denied.

(37) *Manual dimensional inspection machines described in ECCN 2B996.*

(i) *Iran.* Applications for all end-users in Iran of these items will generally be denied.

(A) Contract sanctity date for military end-users or end-uses of manual dimensional inspection machines that were subject to national security controls on August 28, 1991: see paragraph (c)(1)(i) of this Supplement.

(B) Contract sanctity date for all other manual dimensional inspection machines for all end-users: August 28, 1991.

(ii) *Syria.* Applications for military end-users or for military end-uses in Syria of these items will generally be denied. Applications for non-military end-users or for non-military end-uses in Syria will be considered on a case-by-case basis.

(A) Contract sanctity date for such manual dimensional inspection machines that were subject to national security controls on August 28, 1991: see paragraph (c)(1)(ii) of this Supplement.

(B) Contract sanctity date for all other such manual dimensional inspection machines: August 28, 1991.

(iii) *Sudan.* Applications for military end-users or for military end-uses in Sudan of these items will generally be denied. Applications for non-military end-users or for non-military end-uses in Sudan will be considered on a case-by-case basis. Contract sanctity date for Sudan: January 19, 1996, unless a prior contract sanctity date applies (*e.g.,* items first controlled to Sudan for foreign policy reasons under EAA section 6(j) have a contract sanctity date of December 28, 1993).

(iv) *North Korea.* Applications for military end-users or for military end-uses, or for nuclear end-users or nuclear end-uses, in North Korea of such equipment will generally be denied. Applications for non-military end-users or for non-military end-uses, or for non-nuclear end-users or non-nuclear end-uses, in North Korea will be considered on a case-by-case basis.

(38) *Robots capable of employing feedback information in real time processing to generate or modify programs.*

(i) *Iran.* Applications for all end-users in Iran of these items will generally be denied.

(A) Contract sanctity date for military end-users or end-uses of such robots that were subject to national security controls on August 28, 1991: see paragraphs (c)(1)(i) of this Supplement.

(B) Contract sanctity date for all other such robots: August 28, 1991.

(ii) *Syria.* Applications for military end-users or for military end-uses in Syria of these items will generally be denied. Applications for non-military end-users or for non-military end-uses in Syria will be considered on a case-by case basis.

(A) Contract sanctity date for such robots that were subject to national security controls on August 28, 1991: see paragraph (c)(1)(ii) of this Supplement.

(B) Contract sanctity date for all other such robots: August 28, 1991.

(iii) *Sudan.* Applications for military end-users or for military end-uses in Sudan of these items will generally be denied. Applications for non-military end-users or for non-military end-uses in Sudan will be considered on a case-by-case basis. Contract sanctity date for Sudan: January 19, 1996, unless a prior contract sanctity date applies (*e.g.,* items first controlled to Sudan for foreign policy reasons under EAA section 6(j) have a contract sanctity date of December 28, 1993).

(iv) *North Korea.* Applications for military end-users or for military end-uses, or for nuclear end-users or nuclear end-uses, in North Korea of such equipment will generally be denied. Applications for non-military end-users or for non-military end-uses, or for non-nuclear end-users or non-nuclear end-uses, in North Korea will be considered on a case-by-case basis.

(39) *Explosive device detectors described in ECCN 2A993.*

(i) *Iran.* Applications for all end-users in Iran of these items will generally be denied. Contract sanctity date: January 19, 1996.

(ii) *Syria.* Applications for all end-users in Syria of these items will generally be denied. Contract sanctity date: January 19, 1996.

(iii) *Sudan.* Applications for all end-users in Sudan of these items will generally be denied. Contract sanctity date: January 19, 1996.

(iv) *North Korea.* Applications for all end-users in North Korea of these items will generally be denied.

(40) [Reserved]

(41) *Production technology controlled under ECCN 1C355 on the CCL.*

(i) *Iran.* Applications for all end-users in Iran of these items will generally be denied.

(ii) *Syria.* Applications for military end-users or for military end-uses in Syria of these items will generally be denied. Applications for non-military end-users or for non-military end-uses in Syria will be considered on a case-by-case basis.

(iii) *Sudan.* Applications for all end-users in Sudan of these items will generally be denied.

(iv) *North Korea.* Applications for military end-users or for military end-uses in North Korea of these items will generally be denied. Applications for non-military end-users or for non-military end-uses will be considered on a case-by-case basis.

(42) *Commercial Charges and devices controlled under ECCN 1C992 on the CCL.*

(i) *Iran.* Applications for all end-users in Iran of these items will generally be denied.

(ii) *Syria.* Applications for all end-users in Syria of these items will generally be denied.

(iii) *Sudan.* Applications for all end-users in Sudan of these items will generally be denied.

(iv) *North Korea.* Applications for all end-users in North Korea of these items will generally be denied.

(43) [Reserved]

(44) *Specific processing equipment, materials and software controlled under ECCNs 0A999, 0B999, 0D999, 1A999, 1C999, 1D999, 2A999, 2B999, 3A999, and 6A999 on the CCL.*

(i) *North Korea.* Applications for military end-users or for military end-uses, or for nuclear end-users or nuclear end-uses, in North Korea of such equipment will generally be denied. Applications for non-military end-users or for non-military end-uses, or for non-nuclear end-users or non-nuclear end-uses, in North Korea will be considered on a case-by-case basis.

(ii) [Reserved]

PART 744—[AMENDED]

28. Section 744.7 is amended by revising the phrase ''North Korea or Country Group D:1'' in paragraphs (b)(1), (b)(2) introductory text, and (b)(2)(ii) to read ''Country Group D:1''.

PART 746—[AMENDED]

§ 746.1 [Amended]

29. Section 746.1 is amended:

a. By revising the phrase ''Libya, North Korea,'' in the introductory text of paragraph (a) to read ''Libya,'';

b. By revising the heading of paragraph (a)(1) to read ''Cuba and Libya''; and

c. By revising the phrase ''Cuba, Libya, or North Korea.'' in the first sentence of paragraph (a)(1) to read ''Cuba or Libya.'' and revising the phrase ''Cuba, Libya, and North Korea'' in the second sentence of paragraph (a)(1) to read ''Cuba or Libya.''.

30. Part 746 is amended by removing and reserving § 746.5.

PART 758—[AMENDED]

§ 758.3 [Amended]

31. Section 758.3 is amended by revising the phrase ''Cuba, or North Korea.'' in paragraph (i)(2) to read ''or Cuba.''.

PART 774—[AMENDED]

32. In Supplement No. 1 to part 774 (the Commerce Control List) Category 0—Nuclear Materials, Facilities, and Equipment (And Misc. Items), Export Control Classification Numbers (ECCNs) are amended:

a. By revising the ''License Requirements'' section in ECCN 0A986;

b. By adding a new ECCN 0A999;

c. By revising the ''License Requirements'' section in ECCN 0B986;

d. By adding a new ECCN 0B999; and

e. By adding a new ECCN 0D999 to read as follows:

0A986 Shotgun Shells, Except Buckshot Shotgun Shells, and Parts

License Requirements

Reason for Control: AT, FC, UN.
Control(s).
Country Chart.

AT applies to entire entry. A license is required for items controlled by this entry to North Korea for anti-terrorism reasons. The Commerce Country Chart is not designed to determine AT licensing requirements for this entry. See § 742.19 of the EAR for additional information.

FC applies to entire entry.
FC Column 1.

UN applies to entire entry. A license is required for items controlled by this entry to Rwanda and the Federal Republic of Yugoslavia (Serbia and Montenegro). The Commerce Country Chart is not designed to determine licensing requirements for this entry. See part 746 of the EAR for additional information.

* * * * *

0A999 Specific Processing Equipment, as Follows (See List of Items Controlled)

License Requirements

Reason for Control: AT.
Control(s).
Country Chart.

AT applies to entire entry. A license is required for items controlled by this entry to North Korea for anti-terrorism reasons. The Commerce Country Chart is not designed to determine AT licensing requirements for this entry. See § 742.19 of the EAR for additional information.

License Exceptions

LVS: N/A
GBS: N/A
CIV: N/A

List of Items Controlled

Unit: $ value.
Related Controls: N/A.
Related Definitions: N/A.
Items:
a. Ring Magnets;
b. Reserved.

* * * * *

0B986 Equipment Specially Designed for Manufacturing Shotgun Shells; and Ammunition Hand-Loading Equipment for Both Cartridges and Shotgun Shells

License Requirements

Reason for Control: AT, UN.
Control(s).
Country Chart.

AT applies to entire entry. A license is required for items controlled by this entry to North Korea for anti-terrorism reasons. The Commerce Country Chart is not designed to determine AT licensing requirements for this entry. See § 742.19 of the EAR for additional information.

UN applies to entire entry. A license is required for items controlled by this entry to Rwanda and the Federal Republic of Yugoslavia (Serbia and Montenegro). The Commerce Country Chart is not designed to determine licensing requirements for this entry. See part 746 of the EAR for additional information.

* * * * *

0B999 Specific Processing Equipment, as Follows (See List of Items Controlled)

License Requirements

Reason for Control: AT.
Control(s).
Country Chart.

AT applies to entire entry. A license is required for items controlled by this entry to North Korea for anti-terrorism reasons. The Commerce Country Chart is not designed to determine AT licensing requirements for this entry. See § 742.19 of the EAR for additional information.

License Exceptions

LVS: N/A
GBS: N/A
CIV: N/A

List of Items Controlled

Unit: $ value.
Related Controls: N/A.
Related Definitions: N/A.
Items:
a. Hot cells;
b. Glove boxes suitable for use with radioactive materials.

* * * * *

0D999 Specific Software, as Follows (See List of Items Controlled).

License Requirements

Reason for Control: AT.
Control(s).
Country Chart.

AT applies to entire entry. A license is required for items controlled by this entry to North Korea for anti-terrorism reasons. The Commerce Country Chart is not designed to determine AT licensing requirements for this entry. See § 742.19 of the EAR for additional information.

License Exceptions

CIV: N/A
TSR: N/A

List of Items Controlled

Unit: $ value.
Related Controls: N/A.
Related Definitions: N/A.
Items:
a. Software for neutronic calculations/modeling;
b. Software for radiation transport calculations/modeling;
c. Software for hydrodynamic calculations/modeling.

* * * * *

33. In Supplement No. 1 to part 774 (the Commerce Control List) Category 1—Materials, Chemicals, Microorganisms, and Toxins, ECCNs are amended:

a. By adding ECCNs 1A999, 1B999, 1C999, and 1D999; and

b. By revising the ''License Requirements'' section in ECCN 1C995, to read as follows:

1A999 Specific Processing Equipment, n.e.s., as Follows (See List of Items Controlled)

License Requirements

Reason for Control: AT.
Control(s).
Country Chart.

AT applies to entire entry. A license is required for items controlled by this entry to North Korea for anti-terrorism reasons. The Commerce Country Chart is not designed to determine AT licensing requirements for this entry. See § 742.19 of the EAR for additional information.

License Exceptions

LVS: N/A.
GBS: N/A.
CIV: N/A.

List of Items Controlled

Unit: $ value.
Related Controls: N/A.
Related Definitions: N/A.
Items:
a. Radiation detection, monitoring and measurement equipment, n.e.s.;
b. Radiographic detection equipment such as x-ray converters, and storage phosphor image plates.

* * * * *

1B999 Specific Processing Equipment, n.e.s., as Follows (See List of Items Controlled)

License Requirements

Reason for Control: AT.
Control(s).
Country Chart.

AT applies to entire entry. A license is required for items controlled by this entry to North Korea for anti-terrorism reasons. The Commerce Country Chart is not designed to determine AT licensing requirements for this entry. See § 742.19 of the EAR for additional information.

License Exceptions

LVS: N/A
GBS: N/A
CIV: N/A

List of Items Controlled

Unit: $ value.
Related Controls: See also 1B001, 1B101, 1B201, 1B225 and 1D999.
Related Definitions: N/A.
Items:
a. Electrolytic cells for flourine production, n.e.s.;
b. Particle accelerators;
c. Industrial process control hardware/systems designed for power industries, n.e.s.;
d. Freon and chilled water cooling systems capable of continuous cooling duties of 100,000 BTU/hr (29.3 kW) or greater;
e. Equipment for the production of structural composites, fibers, prepregs and preforms, n.e.s.
* * * * *

1C995 Mixtures Containing Precursor and Intermediate Chemicals Used in the ''Production'' of Chemical Warfare Agents That Are Not Controlled by ECCN 1C350

License Requirements

Reason for Control: AT.
AT applies to entire entry. A license is required for items controlled by this entry to Cuba, Iran, Libya, and North Korea for anti-terrorism reasons. The Commerce Country Chart is not designed to determine licensing requirements for this entry. See part 746 of the EAR for additional information on Cuba, Iran, and Libya. See § 742.19 of the EAR for additional information on North Korea.
* * * * *

1C999 Specific Materials, n.e.s., as Follows (See List of Items Controlled)

License Requirements

Reason for Control: AT.
Control(s).
Country Chart.
AT applies to entire entry. A license is required for items controlled by this entry to North Korea for anti-terrorism reasons. The Commerce Country Chart is not designed to determine AT licensing requirements for this entry. See § 742.19 of the EAR for additional information.

License Exceptions

LVS: N/A
GBS: N/A
CIV: N/A

List of Items Controlled

Unit: $ value.
Related Controls: See also 1C236.
Related Definitions: N/A.
Items:
a. Hardened steel and tungsten carbide precision ball bearings (3mm or greater diameter);
b. 304 and 316 stainless steel plate, n.e.s.;
c. Monel plate;
d. Tributyl phosphate;
e. Nitric acid in concentrations of 20 weight percent or greater;
f. Flourine;
g. Alpha-emitting radionuclides, n.e.s.
* * * * *

1D999 Specific Software, n.e.s., as Follows (See List of Items Controlled)

License Requirements

Reason for Control: AT.
Control(s).
Country Chart.
AT applies to entire entry. A license is required for items controlled by this entry to North Korea for anti-terrorism reasons. The Commerce Country Chart is not designed to determine AT licensing requirements for this entry. See § 742.19 of the EAR for additional information.

License Exceptions

CIV: N/A
TSR: N/A

List of Items Controlled

Unit: $ value.
Related Controls: See also 1B999.
Related Definitions: N/A.
Items:
a. Software specially designed for industrial process control hardware/systems controlled by 1B999, n.e.s.;
b. Software specially designed for equipment for the production of structural composites, fibers, prepregs and preforms controlled by 1B999, n.e.s.

34. In Supplement No. 1 to part 774 (the Commerce Control List) Category 2, Materials Processing, of the Commerce Control List, ECCNs are amended:
a. By revising the ''License Requirements'' section in ECCNs 2A994;
b. By adding ECCNs 2A999 and 2B999; and
b. By revising the ''License Requirements'' section in ECCN 2D994, to read as follows:

2A994 Portable Electric Generators and Specially Designed Parts

License Requirements

Reason for Control: AT.
Control(s).
AT applies to entire entry. A license is required for items controlled by this entry to Cuba, Iran, Libya, and North Korea for anti-terrorism reasons. The Commerce Country Chart is not designed to determine licensing requirements for this entry. See part 746 of the EAR for additional information on Cuba, Iran, and Libya. See § 742.19 of the EAR for additional information on North Korea.
* * * * *

2A999 Specific Processing Equipment, n.e.s., as Follows (See List of Items Controlled).

License Requirements

Reason for Control: AT.
Control(s).
Country Chart.
AT applies to entire entry. A license is required for items controlled by this entry to North Korea for anti-terrorism reasons. The Commerce Country Chart is not designed to determine AT licensing requirements for this entry. See § 742.19 of the EAR for additional information.

License Exceptions

LVS: N/A
GBS: N/A
CIV: N/A

List of Items Controlled

Unit: $ value.
Related Controls: See also 2A226, 2B350.
Related Definitions: N/A.
Items:
a. Bellows sealed valves;
b. Reserved.
* * * * *

2B999 Specific Processing Equipment, n.e.s., as Follows (See List of Items Controlled).

License Requirements

Reason for Control: AT.
Control(s).
Country Chart.
AT applies to entire entry. A license is required for items controlled by this entry to North Korea for anti-terrorism reasons. The Commerce Country Chart is not designed to determine AT licensing requirements for this entry. See § 742.19 of the EAR for additional information.

License Exceptions

LVS: N/A
GBS: N/A
CIV: N/A

List of Items Controlled

Unit: $ value.
Related Controls: See also 0B001, 0B002, 0B004, 1B233, 2A293, 2B001.f, 2B004, 2B009, 2B104, 1B109, 2B204, 2B209, 2B228, 2B229, 2B231, 2B350.
Related Definitions: N/A.

Items:

a. Isostatic presses, n.e.s.;

b. Bellows manufacturing equipment, including hydraulic forming equipment and bellows forming dies;

c. Laser welding machines;

d. MIG welders;

e. E-beam welders;

f. Monel equipment, including valves, piping, tanks and vessels;

g. 304 and 316 stainless steel valves, piping, tanks and vessels;

h. Mining and drilling equipment, as follows:

h.1. Large boring equipment capable of drilling holes greater than two feet in diameter;

h.2. Large earth-moving equipment used in the mining industry;

i. Electroplating equipment designed for coating parts with nickel or aluminum;

j. Pumps designed for industrial service and for use with an electrical motor of 5 HP or greater;

k. Vacuum valves, piping, flanges, gaskets and related equipment specially designed for use in high-vacuum service, n.e.s.;

l. Spin forming and flow forming machines, n.e.s.;

m. Centrifugal multiplane balancing machines, n.e.s.;

n. Austenitic stainless steel plate, valves, piping, tanks and vessels.

* * * * *

2D994 ''Software'' Specially Designed for the ''Development'' or ''Production'' of Portable Electric Generators Controlled by 2A994

* * * * *

License Requirements

Reason for Control: AT.

Control(s).

AT applies to entire entry. A license is required for items controlled by this entry to Cuba, Iran, Libya, and North Korea for anti-terrorism reasons. The Commerce Country Chart is not designed to determine licensing requirements for this entry. See part 746 of the EAR for additional information on Cuba, Iran, and Libya. See § 742.19 of the EAR for additional information on North Korea.

* * * * *

35. Category 2, Materials Processing, of the Commerce Control List, is amended by revising the ''License Requirements'' section in ECCN 2E994 to read as follows:

2E994 ''Technology'' for the ''Use'' of Portable Electric Generators Controlled by 2A994

* * * * *

License Requirements

Reason for Control: AT.

Control(s).

AT applies to entire entry. A license is required for items controlled by this entry to Cuba, Iran, Libya, and North Korea for anti-terrorism reasons. The Commerce Country Chart is not designed to determine licensing requirements for this entry. See part 746 of the EAR for additional information on Cuba, Iran, and Libya. See § 742.19 of the EAR for additional information on North Korea.

* * * * *

36. In Supplement No. 1 to part 774 (the Commerce Control List)—Category 3, Electronics, Export Control Classification Numbers (ECCNs) are amended:

a. By revising the ''License Requirements'' section in ECCN 3A991; and

b. By adding ECCN 3A999, as follows:

3A991 Electronic Devices and Components Not Controlled by 3A001

* * * * *

License Requirements

Reason for Control: AT.

Control(s): AT applies to entire entry.

Country Chart: AT Column 1.

License Requirements Notes:

1. Microprocessors with a CTP below 550 MTOPS listed in paragraph (a) of this entry may be shipped NLR (No License Required) when destined to North Korea, provided restrictions set forth in other sections of the EAR (*e.g.,* end-use restrictions), do not apply.

* * * * *

3A999 Specific Processing Equipment, n.e.s., as Follows (See List of Items Controlled)

License Requirements

Reason for Control: AT.

Control(s).

Country Chart.

AT applies to entire entry. A license is required for items controlled by this entry to North Korea for anti-terrorism reasons. The Commerce Country Chart is not designed to determine AT licensing requirements for this entry. See § 742.19 of the EAR for additional information.

License Exceptions

LVS: N/A

GBS: N/A

CIV: N/A

List of Items Controlled

Unit: $ value.

Related Controls: See also 0B002, 3A225 (for frequency changes capable of operating in the frequency range of 600 Hz and above), 3A233.

Related Definitions: N/A.

Items:

a. Frequency changers capable of operating in the frequency range from 300 up to 600 Hz, n.e.s;

b. Mass spectrometers n.e.s;

c. All flash x-ray machines, and components of pulsed power systems designed thereof, including Marx generators, high power pulse shaping networks, high voltage capacitors, and triggers;

d. Pulse amplifiers, n.e.s.;

e. Electronic equipment for time delay generation or time interval measurement, as follows:

e.1. Digital time delay generators with a resolution of 50 nanoseconds or less over time intervals of 1 microsecond or greater; *or*

e.2. Multi-channel (three or more) or modular time interval meter and chronometry equipment with resolution of 50 nanoseconds or less over time intervals of 1 microsecond or greater;

f. Chromatography and spectrometry analytical instruments.

* * * * *

37. In Supplement No. 1 to part 774 (the Commerce Control List)—Category 6, Sensors and Lasers is amended by adding ECCN 6A999, as follows:

6A999 Specific Processing Equipment, as Follows (See List of Items Controlled)

License Requirements

Reason for Control: AT.

Control(s).

Country Chart.

AT applies to entire entry. A license is required for items controlled by this entry to North Korea for anti-terrorism reasons. The Commerce Country Chart is not designed to determine AT licensing requirements for this entry. See § 742.19 of the EAR for additional information.

License Exceptions

LVS: N/A

GBS: N/A

CIV: N/A

List of Items Controlled

Unit: $ value.

Related Controls: See also 6A203.

Related Definitions: N/A.

Items:

a. Seismic detection equipment;

b. Radiation hardened TV cameras, n.e.s.

* * * * *

Dated: June 12, 2000.

R. Roger Majak,

Assistant Secretary for Export Administration.

[FR Doc. 00–15168 Filed 6–16–00; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

DEPARTMENT OF TRANSPORTATION

44 CFR Part 403

RIN 2105–AC70

Repeal of Traffic Restrictions to North Korea

AGENCY: Department of Commerce and Department of Transportation.

ACTION: Final rule.

SUMMARY: The Departments of Transportation and Commerce maintain joint restrictions on shipping to North Korea, prohibiting any ships documented under the laws of the United States or any aircraft registered under the laws of the United States from engaging in transportation to and from North Korea. In view of the President's recent decision to ease certain sanctions against North Korea, the two departments are repealing the restrictions. This action requires a change to the Code of Federal Regulations.

DATES: This final rule is effective June 19, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher T. Tourtellot, Office of the Assistant General Counsel for International Law, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590. Telephone: (202) 366–9183. Ms. Rochelle Woodard, Department of Commerce, Office of the Chief Counsel for Export Administration, Room 3839, 14th Street & Constitution Avenue NW., Washington, DC 20230. Telephone: (202) 482–5304.

SUPPLEMENTARY INFORMATION: The regulations in 44 CFR Part 403 (Transportation Order T–2), which are the joint responsibility of the Departments of Transportation and Commerce, currently impose a shipping restriction that prohibits any ships documented under the laws of the United States or any aircraft under the laws of the United States from engaging in transportation to and from North Korea.

On September 17, 1999, the President announced his intention to ease certain sanctions against North Korea in order to pursue improved relations. There is also a need to facilitate transportation to and from North Korea in support of the Agreed Framework of October 1994.

To accomplish this goal, the Departments of Transportation and Commerce are repealing Order T–2, 44 CFR Part 403, the effect of which is to permit any ships documented under the laws of the United States and any aircraft registered under laws of the United States to engage in transportation to and from North Korea, subject to applicable regulatory restrictions such as the transportation and export control regulations.

This is being released as a final rule. Prior notice and opportunity for public comment are not required to be provided for this rule pursuant to the military and foreign affairs exemption contained in 5 U.S.C. 553(a)(1). Therefore, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable. Because of the need to facilitate transportation to and from North Korea, especially the delivery of humanitarian aid, and because of the need to support the Agreed Framework to pursue improved relations with North Korea in furtherance of United States foreign policy, we are making the rule effective on less than 30-day's notice.

International Trade Impact Statement

This final regulation applies to all United States air carriers and shipping lines, as well as all privately owned aircraft and ships that are documented or registered under the laws of the United States. The rule should improve United States companies' ability to compete in international markets and to participate in trade and travel in the North Korea market. The overall level of travel to and from the United States is not expected to be significantly affected.

Regulatory Impact

Executive Order 12866 and DOT Regulatory Policies and Procedures

This rulemaking affects other federal agencies and involves important matters of public policy, and is therefore significant under DOT Policies and Procedures. It is also a significantly regulatory action for the purposes of Executive Order 12866.

Economic Analysis

The repeal of the regulation will have only the smallest economic impact on affected parties. Given this *de minimis* effect, the Department finds that further economic analysis is unnecessary.

Paperwork Reduction Act

The repeal of this rule will not alter any recordkeeping or reporting requirements.

Other Executive Orders

The repeal of this rule will not implicate any interests affected by the provisions of Executive Order 12630, Government Actions and Interference with Constitutionally Protected Property Rights; Executive Order 12988, Civil Justice Reform; or Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks.

Federalism Implications

The repeal of this regulation has no direct impact on the individual states, on the balance of power in their respective governments, or on the burden of responsibilities assigned them by the national government. In accordance with Executive Order 13132 consultation with state and local governments is, therefore, not required.

Unfunded Mandates Reform Act of 1995

The repeal of this rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more to either state, local, or tribal governments, in the aggregate, or on the private sector.

List of Subjects in 44 CFR Part 403

Air carriers, Korea, Democratic Peoples Republic of, Maritime carriers, Reporting and recordkeeping requirements.

Accordingly, under the authority of Sec. 704, 64 Stat. 816, as amended; 50 U.S.C. App. 2154; interpret or apply sec.101, 64 Stat. 799, as amended; 50 U.S.C. App. 2071; E.O. 10480, 18 FR 4939, 3 CFR 1953 Supp.; sec. 4(a) Pub. L. 89–670, 80 Stat. 933; 49 U.S.C. 1653; and the authority delegated by 49 CFR 1.56a(c) for the Department of Transportation; and as discussed in the Supplementary Information, amend 44 CFR Chapter IV as follows:

PART 403—[REMOVED]

1. Part 403 is removed.

Dated: May 23, 2000.

Iain S. Baird,

Deputy Assistant Secretary for Export Administration, Department of Commerce.

Dated: June 9, 2000.

A. Bradley Mims,

Deputy Assistant Secretary for Aviation and International Affairs, Department of Transportation.

[FR Doc. 00–15217 Filed 6–16–00; 8:45 am]

BILLING CODE 4910–62–M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 500

Foreign Assets Control Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule; amendments.

SUMMARY: The Office of Foreign Assets Control of the U.S. Department of the Treasury is amending the Foreign Assets Control Regulations to implement the President's September 17, 1999, determination to ease sanctions against North Korea. This final rule authorizes new financial, trade, and other transactions with North Korea and its nationals. An import notification and approval procedure will be required for all imports from North Korea. This final rule does not unblock assets within U.S. jurisdiction blocked prior to this time, nor does it affect enforcement actions with respect to prior violations of the embargo.

EFFECTIVE DATE: June 19, 2000.

FOR FURTHER INFORMATION CONTACT: Dennis P. Wood, Chief of Compliance Programs, tel.: 202/622–2490, Steve Pinter, Acting Chief of Licensing, tel.: 202/622–2480, or Barbara Hammerle, Deputy Chief Counsel, tel.: 202/622–2410, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220.

SUPPLEMENTARY INFORMATION:

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Background

On September 17, 1999, the President announced his decision to ease economic sanctions against North Korea in order to improve overall relations with North Korea, to support the Agreed Framework, and to encourage North Korea to continue to refrain from testing long-range missiles. Accordingly, the Office of Foreign Assets Control is amending the Foreign Assets Control Regulations, 31 CFR part 500 (the ''FACR''), to add § 500.586, authorizing new transactions involving property in which North Korean nationals have an interest. The effect of this amendment is that transactions involving such property coming within the jurisdiction of the United States or into the possession or control of persons subject to the jurisdiction of the United States after June 19, 2000 or in which an interest of North Korea or a national thereof arises after that time, are authorized by general license. Newly authorized transactions include, but are not limited to, exportation to North Korea, new investment, and brokering transactions (except as otherwise restricted under regulations administered by other federal agencies, *e.g.,* the Export Administration Regulations). Importations from North Korea require notification to and approval from the Office of Foreign Assets Control for purposes of compliance with Chapter 7 of the Arms Export Control Act. Property blocked as of June 16, 2000. remains blocked. Reports due under general or specific license must still be filed covering activities prior to the effective date of this rule.

Because the Regulations involve a foreign affairs function, the provisions of Executive Order 12866 and the Administrative Procedure Act (5 U.S.C. 553) (the ''APA'') requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply.

Paperwork Reduction Act

As authorized in the APA, the Regulations are being issued without prior notice and public comment. The collections of information related to the Regulations are contained in 31 CFR part 501 (the ''Reporting and Procedures Regulations''). Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), those collections of information have been approved by the Office of Management and Budget (''OMB'') under control number 1505–0164. 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 control number.

List of Subjects in 31 CFR Part 500

Administrative practice and procedure, Banks, Banking, Foreign investments in U.S., Foreign trade, Securities, North Korea.

PART 500—FOREIGN ASSETS CONTROL REGULATIONS

1. The authority citation for part 500 continues to read as follows:

Authority: 50 U.S.C. App. 1–44; E.O. 9193, 3 CFR, 1938–1943 Comp., p. 1174; E.O. 9989, 3 CFR, 1943–1948 Comp., p. 748.

Subpart E—Licenses, Authorizations and Statements of Licensing Policy

2. Section 500.533 is revised to read as follows:

§ 500.533 Exportations, reexportations, and incidental transactions.

(a) All transactions ordinarily incident to the exportation of goods, software, or technology (including technical data) from the United States or reexportation of U.S.-origin goods, software, or technology from a foreign country to any person in a designated foreign country or to the government of a designated foreign country, are hereby authorized, provided that the exportation or reexportation is licensed or otherwise authorized by the Department of Commerce under the Export Administration Regulations (15 CFR parts 730–799).

(b) The general license does not authorize the financing of any transaction from a blocked account.

Note to § 500.533: See note to § 500.586(b).

3. Section 500.586 is added to subpart E to read as follows:

§ 500.586 Authorization of new transactions concerning certain North Korean property.

(a) Subject to the limitations in paragraph (b) of this section,

transactions in which North Korea or a national thereof has an interest are authorized where:

(1) The property comes within the jurisdiction of the United States or into the control or possession of a person subject to the jurisdiction of the United States on or after June 19, 2000; or

(2) The interest in the property of North Korea or a North Korean national arises on or after June 19, 2000.

(b)(1) Unless otherwise authorized by the Office of Foreign Assets Control, all property and interests in property of North Korea or its nationals that were blocked pursuant to subpart B of this part as of June 16, 2000, remain blocked and subject to the prohibitions and requirements of this part;

(2)(i) The importation of products into the United States from North Korea requires approval from the Office of Foreign Assets Control. The person seeking to import products into the United States must provide information relevant to the determination whether the product was produced by

(A) A foreign person whose actions triggered import sanctions under sections 73 and 74 of the Arms Export Control Act;

(B) An activity of the government of North Korea relating to the development or production of any missile equipment or technology; or

(C) An activity of the government of North Korea affecting the development or production of electronics, space systems or equipment, and military aircraft.

(ii) Those seeking to import products from North Korea into the United States must submit all available information satisfying the requirements of paragraph (b)(2)(i) of this section; the name, address, telephone number, facsimile number, and e-mail address of the importer; a description of the product to be imported, including quantity and cost; the name and address of the producer of the product; the name of the location where the product was produced; and the name and address of the North Korean exporter. Requests for import review should be submitted by mail to North Korea Unit, Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW, Annex, Washington, DC 20220. Upon review of the submitted information, the Office of Foreign Assets Control will issue a letter indicating the results of the review to the person seeking to import the product.

(3) Except as authorized by § 500.580 or unless otherwise authorized by the Office of Foreign Assets Control, persons subject to the jurisdiction of the United States are prohibited from engaging in any transfer from the government of North Korea:

(i) Constituting a donation to a person subject to the jurisdiction of the United States; or

(ii) With respect to which a person subject to the jurisdiction of the United States knows (including knowledge based on advice from an agent of the United States Government), or has reasonable cause to believe, that the transfer poses a risk of furthering terrorist acts in the United States.

(4) This section does not affect any open enforcement action initiated by the U.S. government prior to June 19, 2000 or any seizure, forfeiture, penalty, or liquidated damages case that is considered closed in accordance with U.S. Customs or other agency regulations. This section also does not authorize the importation into the United States of goods that are under seizure or detention by U.S. Customs officials pursuant to Customs laws or other applicable provision of law, until any applicable penalties, charges, duties or other conditions are satisfied. This section does not authorize importation into the United States of goods for which forfeiture proceedings have been commenced or of goods that have been forfeited to the U.S. Government, other than though U.S. Customs disposition by selling at auction.

Note to § 500.586(b): The exportation and reexportation of items may be subject to license application requirements under regulations administered by other federal agencies (see *e.g.,* the Export Administration Regulations administered by the Department of Commerce). Section 500.533 of this part continues to provide authority for transactions incident to the exportation and reexportation of items authorized by the Department of Commerce. It should also be noted that the shipment of strategic goods from a foreign country to North Korea by persons subject to the jurisdiction of the United States remains prohibited by 31 CFR part 505. The application requirements for a specific license relating to such goods are found in 31 CFR 501.801.

Dated: June 13, 2000.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: June 13, 2000.

Elisabeth A. Bresee,

Assistant Secretary (Enforcement), Department of the Treasury.

[FR Doc. 00–15390 Filed 6–16–00; 8:45 am]

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Federal Register

Monday,
June 19, 2000

Part IV

Environmental Protection Agency

40 CFR Part 52

Air Quality Implementation Plans; Pennsylvania; Rule and Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA–4091a; FRL–6719–7]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Withdrawal of Direct Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: Due to an adverse comment, EPA is withdrawing a direct final rule which announced the approval of revisions to the Commonwealth of Pennsylvania's State Implementation Plan (SIP). The rule which EPA is withdrawing announced the approval of revisions imposing reasonably available control technology (RACT) on twenty-six major sources of volatile organic compounds (VOCs) and nitrogen oxides (NO_x) located in Pennsylvania. In the direct final rule published on April 18, 2000 (65 FR 20746), EPA stated that if EPA received adverse comment by May 18, 2000, EPA would withdraw the rule and it would not take effect. EPA subsequently received an adverse comment, as well as a separate request for an extension of the comment period. EPA will address the comment received in a subsequent final action based upon the proposed action, which was also published on April 18, 2000 (65 FR 20788). In a document published elsewhere in this issue of the **Federal Register**, EPA is also extending the comment period on this action. EPA will address the adverse comment it has received, as well as any additional comments it may receive during the extended comment period, in its final action.

DATES: The direct final rule is withdrawn as of June 19, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. Ray Chalmers at (215) 814–2061. Mr. Chalmers can also be contacted by mail at the Permits and Technical Assessment Branch, Air Protection Division, Mailcode 3AP11, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103, or via e-mail at chalmers.ray@epa.gov.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Nitrogen dioxide, Ozone.

Dated: June 13, 2000.

Bradley M. Campbell,

Regional Administrator, Region III.

Accordingly, the amendment of 40 CFR part 52, § 52.2020 to add paragraph (c)(140) is withdrawn as of June 19, 2000.

[FR Doc. 00–15522 Filed 6–16–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA4091b;FRL–6719–8]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Approval of VOC and NO_X RACT Determinations for Individual Sources; Extension of Comment Period and Correction of Proposal

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of the comment period and correction.

SUMMARY: In a document published on April 18, 2000 (65 FR 20788), EPA proposed to approve revisions to the Commonwealth of Pennsylvania's State Implementation Plan (SIP) establishing reasonably available control technology (RACT) requirements for twenty-six major sources of volatile organic compounds (VOCs) and nitrogen oxides (NO_X) located in Pennsylvania. EPA specified that comments had to be submitted by May 18, 2000. An individual stated that he required additional time to review the proposal and requested an extension of the comment period. In response, EPA is extending the comment period until July 19, 2000. Also, EPA stated in the notice of proposed rulemaking that details regarding the twenty-six state submittals and EPA's evaluations of them could be found in Technical Support Documents (TSDs). The TSDs provide details regarding twenty-seven submittals. EPA is clarifying that its proposed approval applies to all submittals discussed in the TSDs except that for International Business Systems, Inc. EPA will address Pennsylvania's submittal for International Business Systems, Inc. at a later date.

DATES: Comments must be received on or before July 19, 2000.

ADDRESSES: Written comments should be addressed to Kathleen Henry, Chief, Permits and Technical Assessment Branch, Mailcode 3AP11, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

FOR FURTHER INFORMATION CONTACT: Ray Chalmers, U.S. EPA Region III, by phone at (215) 814–2061 or by e-mail at chalmers.ray@epa.gov.

SUPPLEMENTARY INFORMATION:

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and, is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

EPA does not believe that it is necessary to subject this action extending the comment period and correcting the proposal to notice-and-comment requirements. Under the Administrative Procedure Act or any other statute, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Nitrogen dioxide, Ozone.

Dated: June 12, 2000.

Bradley M. Campbell,

Regional Administrator, Region III.

[FR Doc. 00–15521 Filed 6–16–00; 8:45 am]

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H.R. 3293/P.L. 106–214
To amend the law that authorized the Vietnam Veterans Memorial to authorize the placement within the site of the memorial of a plaque to honor those Vietnam veterans who died after their service in the Vietnam war, but as a direct result of that service. (June 15, 2000; 114 Stat. 335)

H.R. 4489/P.L. 106–215
Immigration and Naturalization Service Data Management Improvement Act of 2000 (June 15, 2000; 114 Stat. 337)

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1–124	(869–038–00120–9)	32.00	July 1, 1999
125–199	(869–038–00121–7)	41.00	July 1, 1999
200–End	(869–038–00122–5)	33.00	July 1, 1999
34 Parts:			
1–299	(869–038–00123–3)	28.00	July 1, 1999
300–399	(869–038–00124–1)	25.00	July 1, 1999
400–End	(869–038–00125–0)	46.00	July 1, 1999
35	(869–038–00126–8)	14.00	[7] July 1, 1999
36 Parts			
1–199	(869–038–00127–6)	21.00	July 1, 1999
200–299	(869–038–00128–4)	23.00	July 1, 1999
300–End	(869–038–00129–2)	38.00	July 1, 1999
37	(869–038–00130–6)	29.00	July 1, 1999
38 Parts:			
0–17	(869–038–00131–4)	37.00	July 1, 1999
18–End	(869–038–00132–2)	41.00	July 1, 1999
39	(869–038–00133–1)	24.00	July 1, 1999
40 Parts:			
1–49	(869–038–00134–9)	33.00	July 1, 1999
50–51	(869–038–00135–7)	25.00	July 1, 1999
52 (52.01–52.1018)	(869–038–00136–5)	33.00	July 1, 1999
52 (52.1019–End)	(869–038–00137–3)	37.00	July 1, 1999
53–59	(869–038–00138–1)	19.00	July 1, 1999
60	(869–038–00139–0)	59.00	July 1, 1999
61–62	(869–038–00140–3)	19.00	July 1, 1999
63 (63.1–63.1119)	(869–038–00141–1)	58.00	July 1, 1999
63 (63.1200–End)	(869–038–00142–0)	36.00	July 1, 1999
64–71	(869–038–00143–8)	11.00	July 1, 1999
72–80	(869–038–00144–6)	41.00	July 1, 1999
81–85	(869–038–00145–4)	33.00	July 1, 1999
86	(869–038–00146–2)	59.00	July 1, 1999
87-135	(869–038–00146–1)	53.00	July 1, 1999
136–149	(869–038–00148–9)	40.00	July 1, 1999
150–189	(869–038–00149–7)	35.00	July 1, 1999
190–259	(869–038–00150–1)	23.00	July 1, 1999
260–265	(869–038–00151–9)	32.00	July 1, 1999
266–299	(869–038–00152–7)	33.00	July 1, 1999
300–399	(869–038–00153–5)	26.00	July 1, 1999
400–424	(869–038–00154–3)	34.00	July 1, 1999
425–699	(869–038–00155–1)	44.00	July 1, 1999
700–789	(869–038–00156–0)	42.00	July 1, 1999
790–End	(869–038–00157–8)	23.00	July 1, 1999
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
1–100	(869–038–00158–6)	14.00	July 1, 1999
101	(869–038–00159–4)	39.00	July 1, 1999
102–200	(869–038–00160–8)	16.00	July 1, 1999
201–End	(869–038–00161–6)	15.00	July 1, 1999
42 Parts:			
1–399	(869–038–00162–4)	36.00	Oct. 1, 1999
400–429	(869–038–00163–2)	44.00	Oct. 1, 1999
430–End	(869–038–00164–1)	54.00	Oct. 1, 1999
43 Parts:			
1–999	(869–038–00165–9)	32.00	Oct. 1, 1999
1000–end	(869–038–00166–7)	47.00	Oct. 1, 1999
44	(869–038–00167–5)	28.00	Oct. 1, 1999
45 Parts:			
1–199	(869–038–00168–3)	33.00	Oct. 1, 1999
200–499	(869–038–00169–1)	16.00	Oct. 1, 1999
500–1199	(869–038–00170–5)	30.00	Oct. 1, 1999
1200–End	(869–038–00171–3)	40.00	Oct. 1, 1999
46 Parts:			
1–40	(869–038–00172–1)	27.00	Oct. 1, 1999
41–69	(869–038–00173–0)	23.00	Oct. 1, 1999
70–89	(869–038–00174–8)	8.00	Oct. 1, 1999
90–139	(869–038–00175–6)	26.00	Oct. 1, 1999
140–155	(869–038–00176–4)	15.00	Oct. 1, 1999
156–165	(869–038–00177–2)	21.00	Oct. 1, 1999
166–199	(869–038–00178–1)	27.00	Oct. 1, 1999
200–499	(869–038–00179–9)	23.00	Oct. 1, 1999
500–End	(869–038–00180–2)	15.00	Oct. 1, 1999
47 Parts:			
0–19	(869–038–00181–1)	39.00	Oct. 1, 1999
20–39	(869–038–00182–9)	26.00	Oct. 1, 1999
40–69	(869–038–00183–7)	26.00	Oct. 1, 1999
70–79	(869–038–00184–5)	39.00	Oct. 1, 1999
80–End	(869–038–00185–3)	40.00	Oct. 1, 1999
48 Chapters:			
1 (Parts 1–51)	(869–038–00186–1)	55.00	Oct. 1, 1999
1 (Parts 52–99)	(869–038–00187–0)	30.00	Oct. 1, 1999
2 (Parts 201–299)	(869–038–00188–8)	36.00	Oct. 1, 1999
3–6	(869–038–00189–6)	27.00	Oct. 1, 1999
7–14	(869–038–00190–0)	35.00	Oct. 1, 1999
15–28	(869–038–00191–8)	36.00	Oct. 1, 1999
29–End	(869–038–00192–6)	25.00	Oct. 1, 1999
49 Parts:			
1–99	(869–038–00193–4)	34.00	Oct. 1, 1999
100–185	(869–038–00194–2)	53.00	Oct. 1, 1999
186–199	(869–038–00195–1)	13.00	Oct. 1, 1999
200–399	(869–038–00196–9)	53.00	Oct. 1, 1999
400–999	(869–038–00197–7)	57.00	Oct. 1, 1999
1000–1199	(869–038–00198–5)	17.00	Oct. 1, 1999
1200–End	(869–038–00199–3)	14.00	Oct. 1, 1999
50 Parts:			
1–199	(869–038–00200–1)	43.00	Oct. 1, 1999
200–599	(869–038–00201–9)	22.00	Oct. 1, 1999

Title	Stock Number	Price	Revision Date
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 1999, through January 1, 2000. The CFR volume issued as of January 1, 1999 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 1999, through April 1, 2000. The CFR volume issued as of April 1, 1999 should be retained.

[6] No amendments to this volume were promulgated during the period April 1, 1998, through April 1, 1999. The CFR volume issued as of April 1, 1998, should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 1998, through July 1, 1999. The CFR volume issued as of July 1, 1998, should be retained.